

TIRC Pty Limited Terms and Conditions for the Supply of Services

THE CLIENT'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 10

1. INTERPRETATION

1.1. In these Conditions the following definitions apply:

"Background IPR" means intellectual property rights in any material, in which a party or a third party holds intellectual property rights and which is made available by a party for the purpose of this agreement before, on or following the commencement of this agreement, and includes material specified in the Proposal, or derivatives of that material where such derivative work cannot be used without infringing the intellectual property rights in the underlying material

"Cash Rate" means the cash rate set by the Reserve Bank of Australia, as applicable from time to time.

"Client Information": the information that the Client should provide to TIRC in relation to the Services (including all relevant details which relate to the Client's requirement for the provision of the Services)

"Client Materials": all Documents, Client Information and other information and materials provided by the Client to TIRC relating to the Services which existed prior to the Commencement Date and/or were generated independently of the Contract.

"Client": the person, firm or company who purchases Services from TIRC.

"Consequential Loss" includes, but is not limited to, loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against you by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage

"Contract": The contract between TIRC and the Client for the supply of Services formed in accordance with clause 2.2 of these Conditions

"Deliverables": all Documents produced by TIRC for the Client in any form.

"Document": includes, in addition to any document in writing, any drawing, map, plan, diagram, computer program, design, picture or other image, tape, disk or other material, device or record embodying information and/or data in any form.

"Group": in relation to a company, that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiary of such holding company; and each company in a group is a member of the group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to the company as it is at that time.

"Intellectual Property Rights": patents, rights to inventions, copyright and related rights, moral rights, trade marks and

service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Order": The Client's order for Services

"Proposal": the proposal attached to these Conditions containing details of the Services, Deliverables and charges.

"Services": The Services to be provided by TIRC under the Contract as set out in the Proposal together with any other services which TIRC provides or agrees to provide to the Client.

"Subsidiary": has the meaning given in the *Corporations Act 2001 (Cth)*.

"Third Party Materials": training and/or any Document and/or other materials proprietary to third parties which is to be provided to the Client by TIRC.

"TIRC": TIRC (Australia) Pty Limited ABN 87 614915776

"TIRC Materials": all Documents provided by TIRC relating to the Services which existed prior to the commencement of the Contract and/or were generated independently of the Contract.

1.2. In these Conditions the following rules apply:

1.2.1. Clause headings shall not affect the interpretation of these Conditions.

1.2.2. A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

1.2.3. A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.4. A reference to a statute, statutory provision or subordinated legislation is a reference to such statute, statutory provision or subordinate legislation as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted.

1.2.5. A reference to writing or written includes faxes and e-mail.

1.2.6. any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF CONTRACT

2.1. The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when TIRC issues written acceptance of the Order or (if earlier) starts to provide the Services at which point and on which date the Contract shall come into existence (**"Commencement Date"**).

2.3. Any samples, drawings, descriptive matter or advertising issued by TIRC, and any descriptions or illustrations contained in TIRC's catalogues or brochures, are issued or published for the

sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5. Any quotation given by TIRC shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. SUPPLY OF SERVICES

3.1. TIRC shall provide the Services, and deliver the Deliverables to the Client, in accordance in all material respects with the Proposal.

3.2. TIRC shall use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3. TIRC shall have the right (but not the obligation) to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and TIRC shall notify the Client in any such event.

3.4. TIRC warrants to the Client that the Services will be provided using reasonable care and skill.

3.5. Notwithstanding anything to the contrary, TIRC does not warrant that the provision of the Services and/or any software supplied as part of the Deliverables will be uninterrupted or error-free.

4. CLIENT'S OBLIGATIONS

4.1. The Client shall:

4.1.1. co-operate with and comply with reasonable instructions from TIRC in all matters relating to the Services;

4.1.2. provide, for TIRC, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as requested by TIRC and ensure that it is suitable for the purposes for which it is used in relation to the Services and conforms to all relevant Australian standards or requirements;

4.1.3. promptly provide such Client Materials as TIRC may request and ensure that they are complete and accurate in all respects;

4.1.4. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the use of TIRC Materials insofar as such licences, consents and legislation relate to the Client's business, premises and staff in all cases before the date on which the Services are to start;

4.2. The Client acknowledges that it is responsible for providing the Client Information and that TIRC shall rely on the Client Information in determining and selecting the appropriate Services and any advice given by the Client (its employees, directors, agents and sub-contractors) (in relation to the suitability of the Services for meeting the Client's requirements) such that to the extent that the Services comply with such specification and or such advice then TIRC shall be deemed to

have supplied the same in accordance with the Contract, without limitation, notwithstanding the Client Information.

4.3. If the Client wishes to amend the Client Information or in the event that the Client Information is found to be inaccurate and/or not complete for any reason other than TIRC's negligence, TIRC will be entitled to alter the Contract for the provision of the Services (including without limitation increasing the Price).

4.4. If TIRC's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, TIRC shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay; and the Client shall be liable to pay to TIRC, on demand, all reasonable costs, charges or losses sustained or incurred by TIRC that arise directly or indirectly from the Client's act or omission, subject to TIRC confirming such costs, charges and losses to the Client in writing.

4.5. Where TIRC purchases goods and/or services for the Client from a third party it does so as agent for the Client and it shall be the Client's responsibility to ensure that such goods and/or services are suitable for its requirements and TIRC shall have no responsibility or liability for such goods and/or services (whether for their suitability, performance or otherwise).

4.6. If the Client wants to (a) amend the Client Material/Order (including changing the timescales for the performance of the Services); and/or (b) cancel the Order or any part thereof (a "Change"); the Client shall provide TIRC with as much notice as possible of the Change and in any event shall provide not less than 15 days notice from the date of the Order and TIRC will provide reasonable assistance to the Client in trying to effect the Change provided that the Client acknowledges that consultants may have been instructed in the provision of the Services and that the Change may not be possible without incurring a charge. Subject to the Client paying all outstanding payments arising in respect of the Agreement and all cost expenses and liabilities incurred or paid by TIRC as a result of the Change and a reasonable sum to reflect the profit that TIRC would have earned on the same, TIRC may try to put in place agreements between the Client and the relevant consultant, under which the consultant may agree to such alteration/cancellation of the Order; TIRC cannot guarantee that the consultant will agree to the same and TIRC shall not be obliged to effect the Change.

5. TITLE AND RISK

5.1. Risk in all Deliverables will pass to the Client on delivery.

5.2. Ownership of the Deliverables shall not pass to the Client until TIRC has received in cleared funds all sums due to it in respect of the Deliverable provided that, for the avoidance of doubt, ownership of any Intellectual Property Rights in the Deliverables shall not pass to the Client.

6. SOLICITATION OF EMPLOYEES

6.1. Neither party shall, without the prior written consent of the other party, at any time from the date of the Contract to the expiry of twelve months after termination of the Contract solicit or entice away from the other party or employ or attempt to

employ any person who is, or has been, engaged as an employee or sub-contractor of the other party.

6.2. Any consent given by a party (the “**consenting party**”) in accordance with clause 6.1 shall be subject to the party (the “**recruiting party**”) wishing to solicit or entice away from the consenting party or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the consenting party paying to the consenting party a sum equivalent to 20% of the then current annual remuneration of the consenting party's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the recruiting party to such employee or sub-contractor.

7. CHARGES AND PAYMENT

7.1. The Client will pay the charges for the Services set out in the Proposal.

7.2. Except as otherwise specified in the Contract any charges contained in the Proposal exclude:

7.2.1. expenses reasonably incurred by TIRC in connection with the Services which will be charged (at cost) to the Client in accordance with TIRC's expenses policy (as amended from time to time); and

7.2.2. GST, and/or any relevant local goods and services tax which TIRC shall add to its invoices at the appropriate rate, and the Client must pay TIRC an additional amount equal to the prevailing GST rate subject to the receipt by the Client of a valid tax invoice.

7.3. Time for payment shall be of the essence of the Contract and the Client shall pay each invoice submitted to it by TIRC, in full and in cleared funds, within 30 days of the date of each invoice.

7.4. Without prejudice to any other right or remedy that it may have, if the Client fails to pay TIRC on the due date, TIRC may:

7.4.1. charge interest on such sum from the due date for payment at the annual rate of 4% above the Cash Rate, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment, plus any costs or expenses (including full legal expenses on a full indemnity basis) that it incurs in relation to seeking payment from the Client; and

7.4.2. notwithstanding clause 7.4.1, TIRC may in the alternative claim interest at its discretion at 10% per annum, calculated daily, plus any costs or expenses (including full legal expenses), that it incurs in relation to seeking payment from the Client section 101 of the *Civil Procedure Act 2005* (NSW); and

7.4.3. suspend all Services until payment has been made in full.

7.5. All sums payable to TIRC under the Contract shall become due immediately on its termination, despite any other provision. This clause 7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.6. TIRC may, without prejudice to any other rights it may have, set off any liability of the Client to TIRC against any liability of TIRC to the Client.

7.7. If the Client requests in writing either that the Services be postponed or that Services should not be completed, or if this agreement terminates for any reason other than for breach of this agreement by the Client, the Client must pay TIRC for all the Services provided, and all additional expenses incurred or committed to by TIRC up to the date that it receives such written notification from the Client.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. TIRC acknowledges that the Intellectual Property Rights in Client Materials are proprietary to the Client.

8.2. Except for Client Materials, the Client acknowledges that any and all Intellectual Property Rights created, subsisting or used in or in connection with the Services and the Deliverables including all documentation and manuals relating thereto are legally and/or beneficially owned by TIRC or (as TIRC may direct) TIRC's supplier.

8.3. In the event that new inventions, designs or processes evolve or are otherwise generated in the performance of or as a result of the Contract the Client acknowledges that all rights in the same shall vest in TIRC or (as TIRC may direct) TIRC's supplier. The Client must not in any way do, carry out or perform any act that compromises or infringes the Intellectual Property Rights of TIRC, TIRC's supplier or of any other party from whom TIRC licenses such rights.

8.4. Third Party Materials

8.4.1. It is the practice of suppliers of Third Party Materials to retain ownership of any Intellectual Property Rights in such Third Party Materials (the “**Rights**”).

8.4.2. TIRC can only grant to the Client such Rights in the Third Party Materials as TIRC may have and, save as herein provided for, no warranty is given in respect of the exercise by any third party of such Rights against the Client.

8.4.3. The Clients shall only have such Rights in the Third Party Materials as are expressly granted to the Client whether manifest from the Third Party Materials concerned (or any document attached to or accompanying such Third Party Materials) or which have otherwise been notified by TIRC to the Client in writing.

8.4.4. TIRC shall be entitled to stipulate express restrictions on the Client's use from time to time provided that they shall be reasonable.

8.5. Where the Services involve the use of any Client Materials, the Client hereby grants to TIRC a non-transferable, non-exclusive right and license for the duration of the Contract to use, copy, modify and prepare derivative works of any such Intellectual Property Rights to the extent necessary to enable TIRC to perform the Services in accordance with the Contract.

8.6. Subject to clause 8.4, TIRC hereby grants to the Client a non-exclusive, non-transferable licence to use the Deliverables as follows:

8.6.1. use of the Deliverables shall be solely for the Client's own internal employee training purposes to which the Deliverables relate and may be such use of a Deliverable as is expressly notified by TIRC to the Client;

8.6.2. the Client may not use the Deliverables other than as specified in this clause 8 without the prior written consent of TIRC and the Client acknowledges that additional fees may be payable on any change of use approved by Company;

8.6.3. the Client may only make as many copies of the Deliverables as are expressly permitted by TIRC and shall take such steps to prevent unauthorised copying of any Deliverables as it would take to protect its own similar information and materials of equivalent value and importance to the Deliverables.

8.7. Except as permitted in this clause 8 the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to any Deliverables.

8.8. The Client shall permit TIRC to inspect and have access to any premises, and to the computer equipment located there, at or on which the Deliverables are being kept or used, and any records kept pursuant to the licence granted in this clause 8, for the purposes of ensuring that the Client is complying with the terms of this licence.

9. CONFIDENTIALITY

9.1. A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

10. LIMITATION OF LIABILITY

10.1. The Client warrants that all work and materials provided by the Client (including its Background IPR) will be free and clear of all liens and encumbrances and may be lawfully used by TIRC without infringing upon the rights of others including, and without limiting the generality of the foregoing, any copyright, trade secret, patent or trade mark rights of any third party.

10.2. The Client acknowledges that it has not relied on any advice, representation or warranty given or made by TIRC in connection with the Services and which is not expressly stated in this agreement.

10.3. To the extent permitted by law, all warranties, conditions and representations by TIRC are excluded, and neither TIRC nor any of its officers, employees, agents or related bodies corporate will be responsible or liable in any way (including for negligence) for any loss, damage, liability or costs incurred, suffered or sustained by the Client or claims made against the Client, and the Client agrees not to make any claim against TIRC, due to or arising out of the provision of the Services. If a term is implied by law into this agreement and the law prohibits provisions in a contract excluding or modifying liability under that term, then such term will be included in this agreement. However to the extent permitted by law, TIRC's liability for breach of such term will be limited, at TIRC's option, to one or more of the following:

10.3.1. the supply of the Services again;

10.3.2. the payment of the cost of having the Services supplied again.

10.4. TIRC does not guarantee that the Services will provide any specific results. In particular, and without limiting the foregoing, TIRC makes no guarantees, warranties or representations as to the search engine results that will be achieved, or that the Client will receive any new or increased numbers in customers or revenue as a result of the Services.

10.5. Without limitation, TIRC will under no circumstances be liable for any indirect or Consequential Loss the Client suffers.

10.6. The Client indemnifies and holds TIRC harmless in respect of any and all claims, loss or damage of any kind whatsoever (including legal costs and disbursements on a full indemnity basis), arising directly or indirectly out of any:

10.6.1. act or thing done by TIRC in good faith and purportedly pursuant to a right granted to TIRC under the provisions of this agreement

10.6.2. infringement of third-party trade mark rights

10.6.3. breach by the Client of any of the terms of this agreement

10.6.4. material that TIRC posts on the Client's behalf, and

10.6.5. comments that are posted by third parties in response to material or Content that TIRC posts on the Client's behalf.

11. TERMINATION

11.1. Either party may terminate the Contract and/or any Services provided pursuant to the Contract immediately (or following such notice period as it sees fit), by giving written notice to the other party if:

11.1.1. the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 days of that party being notified in writing of the breach.

11.1.2. the other party repeatedly breaches any of the terms of the Contract during two or more consecutive months and (if such breaches are remediable) has failed to remedy such breaches within a period of 30 days after being notified in writing to do so.

11.1.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 585 of the *Corporations Act (Cth)* 2001 or (being a partnership) has any partner to whom any of the foregoing apply;

11.1.4. an order is made or a resolution is passed for the winding up of the other party; or

11.1.5. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors =; or

11.1.6. a receiver is appointed over all or a substantial part of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party; or

11.1.7. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

11.1.8. the other party ceases, or threatens to cease, to trade; or

11.1.9. the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.2. Without limiting its other rights or remedies, TIRC may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

11.3. Without limiting its other rights or remedies, TIRC shall have the right to terminate the Contract by giving the Client two (2) months' written notice.

11.4. On termination of the Contract for any reason:

11.4.1. all licences granted under the Contract which is being terminated under this clause shall immediately terminate;

11.4.2. the Client shall immediately pay to TIRC all of TIRC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, TIRC may submit an invoice, which shall be payable immediately on receipt;

11.4.3. the Client shall promptly return all of TIRC Materials and Deliverables in respect of which ownership has not transferred to the Client under clause 5. If the Client fails to do so, then TIRC may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and

11.4.4. the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

11.5. On termination of any of the Services provided pursuant to the Contract, the provisions of clause 11.4 shall apply to the extent that they relate to the Services that are the subject of termination.

12. GENERAL

12.1. Neither party shall be liable for delay in performing or failure to perform obligations under the Contract if the delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances either party may rely on the provisions of this clause for exemption from liability for non-performance part performance defective performance or delay and in the event that any such delay or failure continues for a period in excess of 90 consecutive days either party shall have the right to terminate the Contract with immediate effect by giving notice in writing to the other party.

12.2. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by TIRC.

12.3. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

12.4. This Contract (including the documents and instruments referred to therein) ("**the Documents**") supersedes all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto.

12.5. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently).

12.6. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

12.7. Subject to clause 12.8, the Contract is personal to the parties and no party shall, without the prior written consent of the other party (such consent not to be unreasonably conditioned, withheld or delayed), assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with the Contract or any of its rights and obligations under or arising out of the Contract (or any document referred to in it), or purport to do any of the same. TIRC may sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

12.8. TIRC may, without the consent of the Client, assign the benefit of all or any of TIRC's obligations, or any benefit it enjoys under the Contract (or any document referred to in the agreement), to a member of its Group.

12.9. Except in the circumstances specified in Clause 4.5, nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way. Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

12.10. Any notice given under the Contract shall be properly served only if it is in writing, sent by first class pre-paid recorded delivery post to the receiving party, at the addresses stated above.

12.11. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of the State of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State.