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## Terms & Conditions of Services

### 1. DEFINITIONS

The following expressions used in these Terms and Conditions shall have the following meaning, unless the context clearly requires otherwise:

- a) **Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;
- b) **Contract** means this legally binding agreement entered between you and TechConnect for the supply of Services comprising these Terms and Conditions and a relevant Work Order from time to time;
- c) **Customer (you / your)** means the person or entity to whom Services are supplied from time to time and the Customer's servants and agents;
- d) **Debt** means any and all moneys due and owing by you to TechConnect whether in relation to one or more Contracts and includes, without limitation, any Overdue Amounts;
- e) **Fees** means the fees payable by you to TechConnect for the Services provided pursuant to a Work Order;
- f) **Goods** includes any (novel) software programs, source and object codes, specifications, designs, processes, techniques, concepts, improvements, discoveries, ideas, inventions and related documentation, made or arising in connection with the Services;
- g) **IP** means all intellectual and industrial property rights (such as copyright and related Rights), all Rights in relation to inventions (including patents and patent Rights), all registered and unregistered trade-marks, all Rights relating to registered designs, and all other Rights resulting from intellectual activity in the artistic, literary or scientific fields excluding any moral attribution Rights;
- h) **Obligation** means any express or implied legal, equitable, contractual, statutory or other obligation, promise, agreement, covenant, commitment, duty, undertaking or liability;
- i) **Offer** means any verbal or written communication made by TechConnect (or any person on behalf of TechConnect) to you for the supply of Services to you;
- j) **Overdue Amount** means any amount of money that remains unpaid after TechConnect issues an invoice to you requiring payment for that amount and the time permitted to pay that amount has lapsed;
- k) **Parties** means you and TechConnect;
- l) **Personal Information** has the definition attributed to it under Privacy Act 1988 (Cth);
- m) **Rights** means any legal, equitable, contractual, statutory or proprietary right, chose in action, power, authority, benefit, privilege, remedy, or discretion;
- n) **Services** means any service that TechConnect may provide from time to time;
- o) **TechConnect** means TechConnect IT Solutions Pty Ltd ACN 152 230 745 and its servants and agents;
- p) **Terms and Conditions** means the Terms and Conditions set out in this document; and
- q) **Work Order** means any customer agreement or written communication made by you (or any person on your behalf) to TechConnect requesting TechConnect supply Goods or Services to you in the approved form supplied by TechConnect.

### 2. GENERAL

When you enter into a Contract with TechConnect you agree that:

- a) you have read and understood these Terms and Conditions and you agree to be bound by them;
- b) these Terms and Conditions apply to every transaction for the supply of Goods or Services;
- c) any variation to a Contract or these Terms and Conditions must be made with the consent of both Parties and must be in writing and signed by both Parties;
- d) each party will be and act as an independent contractor and not as an agent or partner of, or joint venturer with, the other party for any purpose related to the Contract or the transactions contemplated by any Contract, and you do not have any Rights, power or authority to act or create any Obligation, express or implied, on behalf of TechConnect;
- e) that during the rendering of Services and for a period of 1 year after the completion of the Services, you will not solicit/offer employment,

in any way, to any TechConnect employee or consultant deployed by TechConnect who renders any of the Services. In the event you are in breach of this provision, TechConnect will be entitled to recover from you, liquidated damages equal to the greater of:

- (i) the gross revenue generated by such employee or consultant for the 12-month period immediately preceding the breach; or
  - (ii) the employee's or consultant's gross income paid by TechConnect in the same 12-month period.
- f) TechConnect may subcontract any and all of its Rights and Obligations under any Contract.

### **3. WORK ORDERS**

- a) If you wish to request TechConnect to supply Services to you, you must deliver a Work Order to TechConnect by email, text message, post or hand-delivery.
- b) A Work Order must not contain, or incorporate by reference, any other document, terms or conditions.
- c) TechConnect will endeavour to inform you whether TechConnect accepts or does not accept a Work Order within seven (7) days after that Work Order is received by us.
- d) TechConnect may accept a Work Order by:
  - (i) delivering written notice to you;
  - (ii) verbally communicating its acceptance to you or your personnel; or
  - (iii) commencing supply of the Services requested by a Work Order.

### **4. OFFERS TO SUPPLY**

- a) In the absence of a Work Order being delivered to TechConnect by you, an Offer may be made from TechConnect to you.
- b) An Offer will lapse if, thirty (30) days after the Offer has been delivered to you, the Offer has not been accepted by you.
- c) You must endeavour to inform TechConnect whether you accept or do not accept an Offer within seven days of the date that Offer is delivered to you.
- d) You may accept an Offer by:
  - (i) written notice to TechConnect;
  - (ii) verbally communicating your acceptance to TechConnect personnel; or
  - (iii) allowing (through act or omission) TechConnect to provide Services to you.

### **5. ENTIRE AGREEMENT**

No other terms or conditions apply to the Contract between the Parties, these Terms and Conditions and the details that have provision made for insertion in TechConnect approved Work Order are the only terms that apply to the Contract.

You fully indemnify and hold TechConnect harmless from any Claim based on terms and conditions outside of these Terms and Conditions.

### **6. RATES**

- a) If you deliver a Work Order to us, our rates for Services provided pursuant to that Work Order will be as expressly stated in that Work Order (or any response we issue to you) and you acknowledge the provisions and expectations listed for the potential for any Services to be required outside of the scope contained in the Work Order.
- b) If TechConnect foresees that the time schedules or budget estimate(s) included in the Work Order will be exceeded, it will inform you in writing as soon as reasonably practicable.

### **7. PPSA**

You acknowledge and agree that pursuant to the Contract and for the purposes of the PPSA TechConnect:

- (i) retains ownership of the Goods and IP provided as part of (or developed out of) the Services at all times and you are a mere bailee in possession by virtue of it being on your site to conduct the Services;
- (ii) maintains a security interest in all of your assets as well as any work product created that has derived from the Services TechConnect provided;

- (iii) is entitled in its sole discretion to take such steps as it considers necessary or required to register its security interest on the PPSA register including providing information about you as the grantor of the security interest; and

You grant TechConnect the right to lodge any of (or all of), a:

- (i) general security interest over your all present and after acquired assets;
- (ii) a PMSI over any Goods, IP or other work product created as part of the Services or ancillary to the Contract; and/or
- (iii) a specific security interest over any account that you will be receiving money from a party in which TechConnect's provision of the Goods or Services forms part of the works that you are contracted to do.

## 8. INSURANCE

You must maintain Public Liability insurance to a minimum of \$20 million for each instance that covers TechConnect and its servants, agents and employees in the event they are required to attend any site or premises occupied (or controlled) by you.

## 9. NO REPRESENTATIONS

No employee, agent, representative or affiliate of TechConnect has authority to bind TechConnect to any oral representations or warranty concerning the Goods. Any written representation or warranty not expressly contained in these Terms and Conditions is unenforceable.

## 10. CUSTOMER'S DUTIES AND RESPONSIBILITIES

- a) You are required to make available in a timely manner, at your own cost, all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources required by TechConnect for the performance of the Services. You are responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, and consistency of all such data, materials, and information supplied to TechConnect.
- b) You are required to provide, at your own costs, office space, services and equipment (such as copiers, fax machines and modems) as TechConnect reasonably requires, to perform its Services. You agree that certain Services to be performed by TechConnect may be provided via remote access, requiring the establishment of a secure link via the internet, and you agree that you will assist TechConnect in establishing such a remote connection.

## 11. FEES AND PAYMENTS

- a) You must pay TechConnect the amount stated in any invoice issued by TechConnect.
- b) You must pay TechConnect within fourteen (14) days of the date of the applicable invoice.
- c) If you fail to pay an invoice in accordance with paragraph (a) and (b), the unpaid portion of that invoice becomes an Overdue Amount.
- d) You do not have any right to set-off an amount against a Debt or Overdue Amount and any Claim you believe that you have against TechConnect for monetary remuneration shall be made separately to your Obligations to make payment of a Debt under this Contract.
- e) TechConnect may charge interest at a rate of four (4) % per month on any Overdue Amount until the Overdue Amount is paid.
- f) Unless otherwise agreed in the Work Order, you are required to reimburse all reasonable travel and other related expenses incurred by TechConnect in performance of the Services.
- g) All charges and fees pursuant to any Work Order are exclusive of and do not include any taxes, duties, or similar charges imposed by any government. You agree to pay or reimburse TechConnect for all federal, state, dominion, provincial, or local sales, use, ad valorem, personal property, excise or other taxes, fees, or duties arising out of any Contract or the transactions contemplated by any Contract.

## 12. PRIVACY

Except as permitted under these Terms and Conditions, TechConnect will not, without your consent, use your Personal Information in a way that breaches the *Privacy Act 1988* (Cth).

## 13. DISPUTE RESOLUTION

If you consider there is a genuine dispute between the Parties regarding any aspect of a Contract or its performance then before seeking arbitration or commencing other legal proceedings you must give TechConnect notice in writing setting out full details of the dispute (**Dispute Notice**) and the Parties agree to take the following steps to resolve the dispute:

- a) for a period of 14 days after a Dispute Notice is given (or a longer period if the Parties agree in writing), the Parties will engage in negotiations and discussions in order to seek to resolve the dispute;
- b) the Parties must participate in the negotiations and discussions and use all reasonable endeavours to resolve the dispute. The Parties may also appoint third party consultants to assist in the resolution of the dispute;

- c) if the Parties cannot resolve the dispute within the period stated in paragraph (a), the dispute may be referred to –
  - (i) mediation provided that both parties agree to refer the matter to mediation and agree to the appointment of a particular mediator; or
  - (ii) a court of competent jurisdiction or an adjudicator with jurisdiction to determine the dispute, such referral being made by either of the Parties.

#### 14. ILLEGALITY AND SEVERABILITY

So far as possible a Contract will be construed so as not to be invalid, illegal or unenforceable but if any provision on a proper construction is illegal, invalid or unenforceable:

- a) that provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable and in such manner as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- b) if the provision or part of it cannot be read down in a manner that will give it a valid operation, then the provision or relevant part will be deemed to be void and severable and the remaining provisions of this document will not in any way be affected or impaired.

#### 15. JURISDICTION

You agree that the laws of Queensland, Australia apply to a Contract regardless of your business, residential location, the location nominated for delivery of any Goods, the address for supply of Services or any other factor.

#### 16. RIGHTS

- a) All Rights in the Goods will solely and exclusively remain the property of TechConnect. You shall not sell, transfer, publish, display, disclose, or otherwise make these Rights available to any third party without the prior written consent of TechConnect.
- b) Upon completion of the Services under the applicable Work Order and full payment to TechConnect of all fees due for the respective Services under the applicable Work Order, you shall be granted a non-exclusive, nontransferable license to use the Goods for internal purposes only.

#### 17. SUPPORT

On-going support and maintenance for any of the Goods/Services supplied by TechConnect is not covered by any support agreement. In the event that you wish to obtain support for any of the Goods/Services, you must issue a separate Work Order in accordance with these Terms and Conditions.

#### 18. LIMITATION OF LIABILITY

- a) If you have a genuine grievance with any Service you must notify TechConnect in writing within three days after that Service is supplied. TechConnect will then consider the merits of your claim and at its sole discretion:
  - (i) re-supply the Service;
  - (ii) provide a partial refund for that Service; and/or
  - (iii) decline to provide any remedy contained in this clause.
- b) TechConnect expressly disclaims, to the fullest extent permitted by law, all express, implied and statutory warranties.
- c) Where any statutory warranties may not be excluded, TechConnect' liability is limited to an amount equal to the cost of replacement of the Service.
- d) TechConnect will not be liable for any damage, loss, expense, charge or cost incurred by you as a consequence of:
  - (i) any delay by TechConnect to supply Services to you, whether caused by breakdown, accident, collision, termination of Services by you, termination of Services by TechConnect or otherwise;
  - (ii) termination of Services by you;
  - (iii) termination of Services by TechConnect;
  - (iv) any injury or death to a person; and/or
  - (v) any damage to property,whether caused directly or indirectly by or any employee, agent or other person on behalf of TechConnect.
- e) You must fully indemnify TechConnect against any Claim that becomes due and payable by TechConnect under a contract or as a result of entering into a contract and arises from or in connection with:

- (i) any injury or death to a person; and/or
- (ii) any damage to or theft of Goods or property.

## 19. TERMINATION

### Termination by TechConnect

- a) TechConnect may terminate a Contract immediately upon notice to you in any form at any time and for any reason.
- b) TechConnect's only liability to you upon termination of the Contract is limited to refunding payments made in advance for Services not yet provided less the Debt owing to TechConnect.

### Termination by you

- a) You may terminate a Contract by providing thirty (30) days written notice to TechConnect sent by express post to TechConnect at 29/340 Hope Island Road, Hope Island QLD 4212 or else email [info@tech-connect.com.au](mailto:info@tech-connect.com.au).
- b) Upon your termination of a Contract, you will still be liable to pay TechConnect any Debt, Overdue Amounts and any amount that would have been payable under a Work Order had you not terminated the Contract.

### Termination by Default

TechConnect may terminate the Contract in whole or in part, with immediate effect, by notice sent by registered mail, in the event and at the time if you:

- a) have been presented a petition of bankruptcy or are declared bankrupt;
- b) become an externally administrated body corporate under the Corporations Act;
- c) fail carry out any of your Obligations in accordance with these Terms and Conditions and persist in not carrying out your Obligations for thirty (30) days after a written notice of default is issued to you requiring rectification;

### Effect of Termination

Your Rights and Obligations which in their nature are intended to continue even after termination or dissolution of the respective Contract shall continue to exist after termination or dissolution of the respective Contract, including amongst others, the provisions with respect to payment of fees, the Rights, limitation of liability, confidentiality, governing law and competent courts.

## 20. CONFIDENTIALITY

- a) The parties will receive and hold in complete confidence all information which they may obtain directly or indirectly pursuant to any Contract or the execution thereof including the contents and substance of the respective Contract itself (the **Confidential Information**). The parties will take such steps as may be reasonably necessary to prevent disclosure of the Confidential Information to others.
- b) The parties will not use any of the Confidential Information, except as necessary for the proper execution of the respective Contract, it being further understood that the Confidential Information may be communicated in confidence within the receiving party's organisation, but only to those persons having a need to know such information for the proper execution of the respective Contract. The parties warrant that the above-mentioned persons within their respective organisations will be bound by the same confidentiality obligations that the parties have agreed upon in the respective Contract. The parties further warrant that the Confidential Information shall be kept in secure places, under access and use restrictions not less strict than used by the parties itself to protect their own business secrets.
- c) The parties agree to return all tangible Confidential Information that has been received from the other Party under any Contract including all copies made thereof, promptly upon request by the disclosing party.
- d) The obligations imposed by this clause 20 shall continue in effect for the term of five (5) years from the date of the last disclosure of any Confidential Information.