

1. DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

The following definitions apply to these Standard Conditions of Trade ("**Conditions**"):

- (a) **ACL** means the *Australian Consumer Law* set out in schedule 2 of the *Competition and Consumer Act 2010* (Cth) as amended.
- (b) **Agreement** means, collectively, any Service Agreement, these Conditions and any written amendments to these.
- (c) **Associates** means the person's affiliates, agents, authorised representatives, consultants, contractors, employees, officers, partners and related bodies corporate.
- (d) **Charges** means our charges for the Services (or a Service) calculated under our schedule of rates or other agreed rates and the charges and any cost of any extra service under any contract or agreement with you, and includes any tax including a goods and services tax ("**GST**") levied directly on a transaction or supply under the Agreement.
- (e) **Collateral** means any property of yours whether real or personal.
- (f) **Confidential Information** means all spoken, written or electronically stored information belonging to or relating to a Party or its Associates or customers including the terms of the Agreement, but excluding information in the public domain (other than by default under the Agreement) or information independently known to the receiving Party.
- (g) **Corporations Act** means the *Corporations Act 2001* (Cth) as amended.
- (h) **CPI** means the All Groups Consumer Price Index, Australia as published by the Australian Bureau of Statistics or its successor, and includes any published index replacing the Australian Consumer Price Index.
- (i) **Force Majeure** means any event beyond the reasonable control of either Party which prevents one Party performing one or more of its obligations (other than an obligation to pay) and includes but is not limited to acts of God, natural disasters, fire, flood, lightning strikes, earthquakes, storms, explosions; acts of war, terrorism, riot, civil disturbance, third party criminal activity and sabotage; and industrial action including pickets, work to rule, work bans and strikes.
- (j) **Government Agency** means a government or government department or other body, a governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.
- (k) **Nominated Contact Person** means an authorised person appointed by you under *clause 4.3(c)*.
- (l) **Party or Parties** means you or us or both as the context requires.
- (m) **Penalty Interest Rate** means the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (n) **PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended. Any terms used in *section 10* that have a defined meaning under the PPSA, and which are not already defined in the Agreement, have the same meaning as in the PPSA.
- (o) **Related body corporate** has the meaning given by section 9 of the Corporations Act.
- (p) **Service Agreement** means the agreement between you and us for the carrying out of the Services, which may be written or verbal or a combination thereof, and including all documents expressly incorporated therein (as the case may be).
- (q) **Service** means a discrete and identifiable part of the Services which is to be supplied.
- (r) **Services** means the whole of the operations and services undertaken by us in anyway whatsoever, together with a license to use related information technology systems/processes and software developed by us (if applicable) and utilised by us and/or you in relation to those services, and/or goods being supplied by us to you.
- (s) **Subcontractor** means any person (and its servants or agents) who, pursuant to a contract or arrangement with any other person (whether or not us), provides or agrees to provide the Services or any part of the Services.
- (t) **Term** has the meaning given by *clauses 2.2(b)* and *(c)* being the period from the Commencement Date to either the Completion Date or, if extended, such later date.
- (u) **We, us or our** means the TransVolution entity that supplies the Services to you, being TransVolution (Aust) Pty Ltd (ACN 621 359 153) or another subsidiary of TransVolution Holdings Pty Ltd (ACN 166 876 919).
- (v) **You or your** means the person at whose request or on whose behalf we provide the Services, including any person acting on behalf of and with their authority (express or implied) engaging the Services, and/or the customer under a Service Agreement.

1.2 INTERPRETATION

In the Agreement:

- (a) Headings are for convenience only and do not affect interpretation or construction.
- (b) The singular includes the plural and the plural includes the singular.
- (c) The definition of a word or phrase is applicable to its other grammatical forms.
- (d) If an example is given of anything (including a right, obligation or concept), the example does not limit the scope of that thing.
- (e) No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of the Agreement or any part of it.
- (f) A reference to the expression "and/or" refers to both the conjunctive and disjunctive alternatives.
- (g) A reference to a person includes a body corporate, an unincorporated body or other entity and vice versa.
- (h) A reference to a right or obligation of any two or more persons confers that right or imposes that obligation as the case may be jointly and severally.
- (i) A reference to any Party to the Agreement or to any other body or person referred to in any part of the Agreement includes that Party, body or person's successors or permitted assigns.
- (j) A reference to any legislation includes any amendment, consolidation, re-enactment or replacement of the legislation.
- (k) References to sections and clauses are references to sections and clauses of or to these Conditions unless otherwise specified.

2. APPLICATION

2.1 TERMS

- (a) The Agreement constitutes the terms under which we shall supply Services to you. You warrant that you have read and understood the Agreement, and agree to be bound by its terms.
- (b) All Services are provided by us subject only to the Agreement and the terms which are incorporated into any quotation or invoice issued by us.

2.2 COMMENCEMENT & EXPIRATION

- (a) These Conditions become binding on you from the earliest of the day on which you sign or enter into the Service Agreement or request and/or accept provision of Services from us (thereby constituting a Service Agreement), and cease to be binding upon the date that Service Agreement expires.
- (b) The term of the Agreement shall commence on the Commencement Date and shall terminate on the Completion Date as provided by the Service Agreement, unless extended pursuant to *clause 2.2(c)*.
- (c) Upon the expiration of the initial Term or any renewal Term, the Agreement shall be automatically extended by a period of the same duration (as the initial Term) unless you provide written notice of the intention to terminate the Agreement. Such notice must be provided no less than 90 days, or a period of half the initial Term (whichever is lesser), before such expiration.
- (d) For the purposes of *clauses 2.2(a)* and *(b)*, if there is no expiration or termination date, it shall be deemed to be the date 6 months after the day upon which the Services have been provided in their entirety.

3. OUR RIGHTS & OBLIGATIONS

- (a) Every exemption, limitation, condition, right, defence and indemnity available to us shall be available and shall extend to protect a Subcontractor or any person who is or may be vicariously liable for the acts or omissions of us or a Subcontractor.
- (b) To the extent permitted by law, if a term is implied into the Agreement under Part 3-2 of the ACL or by any other law, our liability is limited to the lesser of:
 - (i) us undertaking the Service again or resupplying the Service; and
 - (ii) the cost of having the Service supplied again.
- (c) Except as provided in *clause 3(d)*, we shall not be responsible in tort, contract, bailment or otherwise for any, or the consequences of any breach of any term of the Agreement by you or delay in providing or failure to provide or perform the Services.
- (d) Any claim for loss of or damage relating to performance of the Services must be notified in writing to us within 7 days of provision of the particular Service.
- (e) In any event, we shall be discharged from all liability whatsoever unless proceedings in a court of competent jurisdiction are brought within 6 months of the provision of the Services.

4. YOUR RIGHTS & OBLIGATIONS

4.1 INVOICING AND PAYMENTS

- (a) Pursuant to the Agreement, we shall be entitled to invoice you for the Charges, for the periods as set out in the Service Agreement or otherwise agreed between the Parties or determined by us, which shall be considered earned immediately upon provision of the Services or part thereof (i.e. a Service) and under no circumstances shall those Charges be refunded.
- (b) The Charges may be updated at any time by written notice, unless otherwise specified in the Service Agreement. The Charges may also be indexed on either 1 January, 1 July or the anniversary date of the Service Agreement each year by the higher of 3% and the change in CPI since the Commencement Date or the last indexation date (whichever is later), and/or indexed or increased as set out in the Service Agreement.
- (c) We may charge for any additional expenses we incur as a result of any incorrect information provided by you in relation to the Services which materially impacts our ability to provide the Services, the time taken to provide the Services and/or other charges or expenses we incur in relation to the Services.
- (d) Any tax invoice issued by us must be paid in full by you within 7 days of the issue date of the tax invoice (unless we agree to other payments terms) or such other date specified as the 'due date' on said invoice ("**Due Date**") and without discount, deduction, counterclaim or set-off, regardless of any dispute between the Parties.
- (e) We shall only accept payment by way of the following payment methods: direct debit or electronic funds transfer to our nominated bank account (as specified on each invoice).

4.2 DEFAULT IN PAYMENT

- (a) In the event that you have directed us to charge to and accept payment from a third party for any part of the Charges, then you shall be deemed to have agreed to be liable for those Charges if that person does not pay those Charges by the Due Date or, if an alternate date is set for payment, by that date.
- (b) If you fail to pay any invoice in accordance with *clause 4.1(b)* and *(c)* or any payment is dishonoured or subject to chargeback, then, without prejudice to our other rights or remedies, we reserve the right to:
 - (i) cancel any rebate, discount or allowance creditable or payable to you, or to which you would otherwise be entitled;
 - (ii) charge you a one-time fee of 10% of the overdue amount, being in consideration of additional costs incurred, whether directly or indirectly, as a result of your late payment;

- (iii) charge you for interest on the overdue amount at the Penalty Interest Rate, accruing daily from 30 days after the Due Date of the relevant invoice;
 - (iv) immediately suspend or refuse to provide to you any or all Services; and
 - (v) retain a lien over any of Collateral in our possession or control.
- (c) You shall be liable for all amounts payable including but not limited to the overdue amount, any fees or interest accrued under *clause 4.2(b)* and any collection and enforcement costs on an indemnity basis together with damages.

4.3 YOUR OBLIGATIONS

You agree to:

- (a) comply with, and ensure your officers, employees, agents and subcontractors comply with, all laws applicable to the performance of this Agreement and warrant that you will not cause us to breach any laws as well as providing all necessary assistance, information and documentation to enable us to comply with any of our obligations under such laws;
- (b) provide us with any relevant information known to you or which reasonably ought to be known to you in relation to the Services and any other information likely to affect the Agreement, and keep us informed of any changes to this;
- (c) nominate in writing to us, within 7 days of commencement of the Term, a person who is authorised to act on your behalf and:
 - (i) their details must be kept current, with any changes provided in writing to us by you; and
 - (ii) until this person is nominated by you, your signatory to the Agreement shall act as such;
- (d) respond in a timely manner if we bring an issue to your attention in relation to the Services;
- (e) grant us a licence to enter your site or, if you are not the owner or occupier of the site, ensure that a licence is granted to us to enter that site as necessarily required to provide the Services; and
- (f) ensure that the Services are used only for lawful purposes.

4.4 YOUR WARRANTIES

You warrant that, other than a claim or allegation by you against us, no claim or allegation shall be made by you against any other person who provides the Services or any part of the Services, which imposes any liability whatsoever and howsoever arising in connection with the provision of the Services.

5. SERVICES

- (a) We may provide the Services by any method which we, in our absolute discretion, deem fit notwithstanding any of your instructions that the Services are to be supplied by another method.
- (b) We may comply with any orders, directions or recommendations made by a Government Agency in relation to the provision of the Services without recourse by you, and at your risk and expense.
- (c) We may subcontract the Services (in whole or in part) on any terms and we are or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of a Subcontractor and/or any person who is or may be vicariously liable for the acts or omissions of us or a Subcontractor, each of whom shall to this extent be or be deemed to be parties to the Agreement.

6. WARRANTIES

6.1 NEGATION

To the maximum extent permitted by law, all terms and warranties expressed or implied by legislation, common law, equity, custom, usage or otherwise in relation to the Agreement and the provision of the Services (including, but not limited to: implied warranties of merchantability and fitness for a particular purpose), are expressly negated and excluded.

6.2 EXCLUSION OF OBLIGATION

We shall be under no obligation to you to perform our obligations under the Agreement whilst and so long as you are in breach of any part of the Agreement or the Agreement is terminated for any reason.

7. INDEMNITY

- (a) Both Parties shall indemnify and hold harmless the other Party and its Associates against and from all liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees arising from or growing out of any injury or death of any persons or loss of or damage to any property when such injury, death, loss or damage occurs from any act, omission or negligence of the first Party and its Associates and any third party claiming to be a beneficiary and:
 - (i) is within its obligations and responsibilities under the Agreement; or
 - (ii) when such injury, death, loss or damage arises out of a breach of any part of the Agreement.
- (b) Irrespective of negligence, breach of the Agreement, or wilful default by us or others, you shall indemnify us in all circumstances arising in respect of the Services provided:
 - (i) for any loss or damage incurred by, any claim or allegation made against, or any claim for death of or bodily injury to a person made against, us or others; and
 - (ii) for breach by you of any part of the Agreement.

8. RELEASES

8.1 GENERAL

You release and indemnify us and our Associates against any action, proceeding, claim, demand or prosecution arising from or in connection with:

- (a) our treating any communication to or from your Nominated Contact Person as being to or from you;
- (b) any acts or omissions of anyone whom you allow to be involved in the Services or their provision, whether deliberately or otherwise;
- (c) your instructions to us, if it causes us to be in breach of any law or infringement of any third party rights;
- (d) our reasonable actions in denying anyone knowledge of or access to the Services for security reasons, non-payment or compliance with any court order, subpoena, warrant or similar process.

8.2 ADVICE & INFORMATION

- (a) We shall not be responsible in tort, contract or otherwise for any, or the consequences of any, loss or damage, costs, fines or penalties incurred by you or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of us to you or others in respect of the Services.
- (b) In giving or making such quotation, advice, statement, representation or information we rely solely on the particulars provided by you in relation to the Services and in relation to the transactions relating to the Services.

9. LIMITATION OF LIABILITY

- (a) Without limitation to *sections 7 and 8*, we shall not be liable, under any circumstances, whether or not the possibility of such damages could have been reasonably foreseen, in connection with the provision of the Services, for losses including, but not limited to production; business; indirect, special, economic or consequential loss including loss of revenue, profits, goods or opportunities you suffer in any way; or any special, indirect, incidental or consequential damages.
- (b) All rights, indemnities and limitations of liability in the Agreement shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the Agreement by us or any other person entitled to the benefit of such provisions.

10. LIENS & PPSA

- (a) You acknowledge that we have a security interest in the Collateral.
- (b) You acknowledge that our rights and interest in proceeds derived from the Collateral constitute a security interest in such proceeds.
- (c) We may register any security interest on the register in any manner we choose (including by registering one or more financing statements in relation to our interest in the Collateral, with such expiry dates as we determine in our absolute discretion). You must provide us with any information we require for the purposes of giving effect to such registration.
- (d) For the purposes of section 157(3) of the PPSA, you irrevocably and unconditionally waive your right to receive any notice from us in connection with the registration of a financing statement or a financing change statement in respect of the Collateral.
- (e) If Chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then the provisions of Chapter 4 are excluded, to the maximum extent possible.
- (f) You give such permission as is necessary under the PPSA for us to take and maintain a security interest over the Collateral pursuant to the Agreement and further warrant that you shall do all such things and sign all such documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) as are necessary and reasonably required to enable us to acquire a perfected security interest in the Collateral and ensure the enforceability and priority of the security interest.
- (g) Neither Party shall disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- (h) We have a lien on the Collateral for any unpaid invoice, or Charges or other money owed by you to us.
- (i) Acting reasonably, we shall have the right to charge for storage and/or may remove to a warehouse or bond store any part of the Collateral at your risk and expense.
- (j) Pursuant to the PPSA, we may sell the Collateral by public auction or private treaty and retain the sums due to us, in addition to the Charges incurred in their detention and sale, from their proceeds and shall pay any surplus to the entitled person on demand.
- (k) Nothing in the Agreement shall be deemed to restrict any rights conferred on us by any laws in any jurisdiction relating to any liens, which rights are deemed to apply to the Agreement in addition to the provisions of this *section 10*.

11. SUSPENSION, TERMINATION & BREACHES

- (a) In our absolute discretion, we may suspend the Services or terminate the Agreement at any time without prior notice if you are in default of your payment obligations under the Agreement.
- (b) We may terminate the Agreement by written notice if:
 - (i) you fail to remedy a breach of the Agreement despite receiving 7 days' written notice of default;
 - (ii) you become insolvent, cease trading, or have an administrator, receiver or manager, or liquidator appointed; or
 - (iii) court judgement is entered against you which remains unsatisfied or unappealed for more than 21 days.

- (c) In addition to our rights under this section, if you breach any term of the Agreement, we may pursue any remedy available to us by law.
- (d) If the Agreement is terminated for any reason whatsoever, then in addition to any other rights we may have:
 - (i) we may issue invoices for any unbilled Charges; and
 - (ii) all unpaid invoices, including those issued under *clause 11(d)(i)* above, become immediately due and payable.

12. DISPUTE RESOLUTION

12.1 PROCEDURE

- (a) Subject to *clause 12.3*, if there is any dispute between the Parties concerning any part of the Agreement, then the Parties must attempt to resolve any such dispute by the dispute resolution procedure set out herein before resorting alternative avenues, including litigation, provided that nothing herein shall preclude a Party from seeking urgent interlocutory relief from a court.
- (b) The dispute resolution procedure is as follows:
 - (i) if a Party believes that a dispute has arisen, it must serve a dispute notice on the other Party;
 - (ii) the dispute notice must state that a dispute has arisen and identify in sufficient detail what the dispute is;
 - (iii) within 3 days of service of the dispute notice, a representative of each Party must meet and seek to resolve the dispute;
 - (iv) failing resolution by the representatives, the Parties may jointly request the appointment of a mediator and, failing agreement, within 7 days of service of the dispute notice, either Party may apply to the President of the Law Institute of Victoria to appoint a mediator;
 - (v) once the mediator has accepted the appointment, the Parties must comply with the mediator's instructions; and
 - (vi) if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the Parties in writing, the mediation ceases.

12.2 MEDIATION

- (a) The mediator may fix the charges for the mediation which must be paid equally by the Parties.
- (b) If the dispute is settled, all Parties must sign the terms of agreement and those terms are binding on the Parties.
- (c) The mediation is confidential and statements made by the mediator or the Parties as well as discussions between the participants to the mediation before, after or during the mediation cannot be used in any legal proceedings.
- (d) It shall be a term of the engagement of the mediator that the Parties release the mediator from any court proceedings relating to the dispute or the mediation.
- (e) The mediator is not bound by the rules of natural justice and may discuss the dispute with a Party in the absence of the other Party.

12.3 PRICING DISPUTES

- (a) Notwithstanding the foregoing provisions of *clause 12.1* and *clause 12.2*, where the dispute relates to the computation of the Charges under any part of the Agreement, either Party may refer the dispute to a chartered accountant appointed by the President for the time being of the Real Estate Institute of Victoria, or in the alternate the Office of the Victorian Small Business Commissioner, who shall act as an expert and not as an arbitrator and whose decision shall be final and binding on all Parties.
- (b) The Parties shall bear the accountant's costs in equal proportions.

13. CONFIDENTIALITY

13.1 NON-DISCLOSURE

The Parties acknowledge that, during the term of the Service Agreement, Confidential Information may be exchanged which is proprietary and confidential to one or both Parties or their Associates. The Parties agree not to use or disclose the respective other Party's or their Associates' Confidential Information except to its Associates and then only to the extent necessary to carry out that Party's obligations under the Agreement.

13.2 EXEMPTIONS

Despite *clause 13.1*, we may use or disclose your Confidential Information to the extent necessary:

- (a) with your consent (which must not be unreasonably withheld);
- (b) to comply with any law, binding directive of a regulator or a court order;
- (c) to comply with the listing rules of any stock exchange on which our securities are listed (if applicable);
- (d) as required by the Australian Taxation Office in connection with our tax affairs;
- (e) obtain professional advice in relation to matters arising under or in connection with this document where our advisors agree to be bound by the same obligation of confidentiality;
- (f) in connection with legal proceedings relating to any part of the Agreement; or
- (g) if the information is generally and publicly available.

14. SERVICE OF NOTICES

- (a) Any document sent by post is taken to have been served on the next business day after posting, unless proved otherwise.
- (b) Any demand, notice or document required to be served by or on any Party may be served by or on the legal practitioner for that Party. It is sufficiently served, if served on the Party or on its legal practitioner:
 - (i) personally on a director or legal practitioner of the Party;

- (ii) by pre-paid post to an address of the Party as set out in the Service Agreement or as amended by written notice by the Party, or the registered address of the Party;
 - (iii) by electronic mail to a recognised e-mail address of the Party for the receipt of general enquiries or legal correspondence, or to an e-mail address for a director of the Party; or
 - (iv) in any manner authorised by law or the Supreme Court of Victoria for the service of documents, including any manner authorised for service on or by a legal practitioner.
- (c) This general condition applies to the service of any demand, notice or document by or on any Party, whether the expression 'give' or 'serve' or any other expression is used.

15. GENERAL

- (a) Neither Party may assign its rights, obligations or responsibilities under the Agreement without the other Party's written approval (which shall not be unreasonably withheld), except where such assignment is by us to an Associate, or to comply with any statutory obligations, and 7 days' written notice is provided.
- (b) Nothing in the Agreement constitutes a partnership or contract of employment. It is the express intention of the Parties to deny any such relationships. We shall not commit or purport to commit you in any way and shall not pledge the credit of you for any purpose whatever except with your express written authority.
- (c) During the Term and for 6 months after the termination of the Agreement, you must not (or attempt to) directly or indirectly canvass, solicit, interfere with or endeavour to entice away from us or our Associates any person who or which at any time during that period was or is our or our Associates' employee, customer, contractor or supplier, or in the habit of dealing with us.
- (d) The law of Victoria and the Commonwealth of Australia apply to the Agreement to the exclusion of any other law, and the Parties submit to the exclusive jurisdiction of the courts of Victoria and any appeals therefrom.
- (e) If any provision of the Agreement is ruled by a court to be invalid, void or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of the Agreement.
- (f) Any delay or failure to fully enforce our rights in relation to a breach by you shall not be construed as a waiver of such rights.
- (g) In the event of any inconsistency in any part of the Agreement, the Service Agreement shall take precedence over these Conditions.
- (h) Any variation or amendment to any part of the Service Agreement must be agreed in writing by an authorised representative of each Party. We reserve the right to amend or modify these Conditions at any time provided that written notice is provided to you in circumstances where such alterations constitute a material change to these Conditions, and such revised Conditions shall form part of the Agreement from the later of their date of update, or the effective date specified on the Conditions or written notice thereof.
- (i) We are not liable for any delay or failure to perform our obligations under the Agreement to the extent that such failure is an event of Force Majeure or a delay, action or inaction of a third party. You remain liable for any and all fixed Charges under the Agreement.
- (j) All monetary amounts are expressed in Australian dollars and are exclusive of GST. Where relevant, we shall issue a tax invoice itemising GST in addition to and payable with the monetary amounts under the Agreement.
- (k) The following parts of these Conditions shall survive termination: *clauses 4.2, 4.4, 11(c) to 11(d) and 15(c) to 15(g); and sections 6 to 8 and 13.*