

**1. Applicability and Acceptance of Terms**

- (a) You are taken to have accepted and be immediately bound, jointly and severally, by the terms of this Agreement on the earlier of the date on which, having been informed of the existence of these terms by reference to these terms in our website and their supply to you as part of our Quotation, the date
  - (i) you apply for a Credit Account Arrangement with us; or
  - (ii) you enter into any Hire Contract with us; or
  - (iii) you instruct us to provide any Services or continue to accept any Services from us, and you agree that the terms of this Agreement (and any specific conditions set out in the Quotation) will then apply to the provision of all Services until the date calculated under clause 1(b).
- (b) Once accepted, this Agreement will continue until the later of:
  - (i) the date 12 months from the date on which all Hire Contracts have either expired, been completed, or otherwise been validly terminated; or
  - (ii) these Terms (and all Hire Contracts to which they apply) are terminated in accordance with the provisions of this Agreement.
- (c) We may amend these Terms at any time by 30 days' Written Notice to you. Changes made under this clause will apply to any instructions to supply Services received by us on or after the effective date of the notice. Changes will not apply retroactively to the supply of Services where the relevant instructions were received by us prior to the effective date of the notice unless you agree in writing. If you do not agree with any proposed amendments, you may terminate these Terms under clause 10 without penalty.

**2. Interaction of Documents**

- (a) Possession of our rates set out in a Quotation does not constitute acceptance of an offer by us to provide any services to you, nor does any pre-Quotation agreement by us to source any workers for you. We are not liable to you for any loss or damage if we do not provide you with a Quotation.
- (b) Any Quotation provided to you constitutes an offer to you from us to provide the scope of Services for the applicable Fees and is valid for the Validity Period set out in the Quotation (or otherwise for 30 days from the date of the Quotation).
- (c) If the Quotation is not accepted within the Validity Period (as set out in clause 2(b)), or if you request changes to the Quotation, we reserve the right to modify the terms of the Quotation, including the scope of the Services and/or the applicable Fees.
- (d) If the Quotation is accepted within the Validity Period, the accepted Quotation (including any written variations to the Quotation agreed between the parties) becomes a Hire Contract and subject to the terms of this Agreement.
- (e) We reserve the right to withdraw a Quotation at any time prior to your acceptance for any reason, including changes in availability. We are not liable to you for any loss or damage for withdrawing a Quotation.

- (f) The parties may agree to a Hire Contract from time to time, setting out the relevant Services and any special conditions. Each Hire Contract is a separate agreement between us and is subject to these Terms and applies for the duration of these Terms. The expiry or termination of any Hire Contract does not automatically affect the validity of these Terms or any other Hire Contract then on foot.
- (g) None of our employees, agents, or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by our management or directors in writing, nor are we bound by any such unauthorised statements.

**3. Your Obligations and Warranties****3.1 Information**

You must:

- (a) provide us with all information necessary for us to provide the Services;
- (b) give us not less than 28 days' prior Written Notice of any proposed change of ownership and/or any other change in your details which may affect our supply of the Services. You are liable for any loss or damage incurred by us as a result of your failure to comply with this clause;
- (c) comply with the National Privacy Principles under the *Privacy Act 1988* (Cth) in relation to any personal information we supply to you under this Agreement;
- (d) ensure that all weekly timesheets depicting the hours worked by Personnel are accurate and authorised by the appropriate person and provided to us by all Personnel. We rely on submitted timesheets to issue you with accurate invoices and to pay Personnel.

**3.2 Warranties**

You warrant that:

- (a) you have the power and authority to enter into these Terms, you are not insolvent, and that these Terms create binding and valid legal obligations on you.
- (b) you have obtained and will maintain all necessary licences or permits under all relevant laws and regulations in relation to hiring Personnel and the work anticipated to be performed by Personnel.

- (c) providing the Services in accordance with your directions will not cause us to contravene applicable laws or infringe third party rights.

**3.3 OHS and Insurance**

- (a) You (or any related or associated entity) are responsible for providing a safe and healthy workplace and systems of work for all Personnel on site which comply with all relevant legal requirements. You agree to:
  - (i) strictly comply with all relevant legislation, regulations, standards, and codes of practice applicable to the site and any property, plant, and equipment made available for Personnel use, expressly including workplace health & safety legislation;
  - (ii) assess the site and any property, plant, and equipment made available for Personnel use on a regular basis and keep us informed of the risks and potential hazards to the Personnel;
  - (iii) do everything reasonable to eliminate hazards and control or minimise risks to the health and safety of the Personnel;
  - (iv) ensure that all necessary licenses, permits, and approvals are obtained and maintained for the site and any property, plant, and equipment made available for Personnel use;
  - (v) provide or assist us to provide (as applicable) adequate training, instruction, and induction of the Personnel in relation to the site and any property, plant, and equipment to be made available for Personnel use;
  - (vi) advise us prior to any fundamental changes to the site, work practices or procedures, plant, equipment, materials, or substances which affect the duties of the Personnel in order for them to receive any additional training or qualifications which may be required to cater for the proposed changes;
  - (vii) adequately supervise Personnel at all times;
  - (viii) not request any Personnel to engage in any work or use any equipment that the Personnel is unqualified to perform or use, or has not received adequate training for;
  - (ix) promptly advise us and

any relevant authority of any incidents and injuries involving any Personnel and conduct investigations into same; and

- (x) assist us in the rehabilitation of Personnel injured on site by provision of suitable alternative duties.
- (b) You authorise us to enter the site from time to time for the purpose of carrying out site inspections and to assess risks and hazards, to meet with the Personnel, and to investigate incidents and injuries.
- (c) You must obtain and maintain adequate insurance in the circumstances, including without limitation, property insurance covering all property, plant & equipment made available for Personnel use, public liability insurance, professional indemnity insurance, and workers compensation injury insurance, with limits reasonably acceptable to us in light of the nature of work the Personnel will be undertaking.

You must produce the certificates of insurance to us on our request.

### 3.4 Non solicitation

You agree that you will not offer to engage directly any Personnel without our prior written consent. If during the term of a Hire Contract or within 3 months of its termination or expiry you engage any Personnel the subject of that Hire Contract to perform similar duties to those provided by the Personnel to you under this Agreement, then a placement fee equal to three weeks' hire relating to the relevant Personnel will be immediately due and payable.

## 4. Services

### 4.1 Supply and Hire Contracts

- (a) We will provide the Services specified in the relevant Hire Contract and in accordance with these Terms, subject to the Specific Exclusions. The supply of Services is contingent on you complying with this Agreement and is subject to availability.
- (b) Unless otherwise specified in a Hire Contract, we will provide the Services during Business Hours.
- (c) You (or your agent) may request changes to the scope of a Hire Contract and we will:
  - (i) make reasonable efforts to accommodate your request, but are not obliged to accept any changes; and
  - (ii) advise you of any applicable additional costs and changes to service timelines.
- (d) If you accept the additional costs and service timeline changes for implementing the requested changes, we will invoice you for the additional costs.
- (e) If the scope of a Hire Contract needs to be amended, or if we incur any cost, because of anything within your control, or anything outside of our control (including without limitation changes to legislation), we reserve our rights to amend the Fees and any service timelines to cater for any changes required or any costs incurred. Amendments to the Fees will be shown as variations on the relevant invoice.
- (f) You may request, and we may at our sole discretion provide, Out of Scope Services. We will charge Out of Scope Fees for any Out of Scope Services we provide.
- (g) We may license or subcontract all or any part of our rights and obligations under this Agreement without your consent.

### 4.2 Delays

- (a) Unless expressly stated in a Hire Contract, any Service timelines provided by us are a guide only and we do not guarantee any fixed deadlines.
- (b) We are not responsible for delays in commencement or delivery of Services caused by any of the following: your delay in providing us with necessary information; the delays, action or inaction of any third party; changes in the scope of a Hire Contract (whether requested by you, or required to cater for changes as per clause 4.1(e)); any Force Majeure Event; or us exercising our rights under clauses 5.5 or 10.1. If any of the preceding events cause a delay, we may, by Written Notice to you, extend any commencement or delivery date by any period as we deem reasonably necessary.

## 5. Fees and Payment

### 5.1 Fee Structure

- (a) Our rates for labour hire services are based on the relevant award and/or industrial agreement applicable to Personnel and include workers

compensation insurance, superannuation, and leave entitlements, long service leave, and redundancy funds, and/or casual loading (as applicable).

- (b) Where your rate of pay exceeds that provided by us to Personnel, or where Personnel are entitled to any other entitlements, such as site allowances, dirt money, meal allowance, redundancy, or other allowances, you must advise us. We will pay Personnel in accordance with your higher pay structure and the Fees will be adjusted accordingly. You must not pay Personnel any payment directly (including incentive and bonus payments).
- (c) Regardless of anything set out in a Hire Contract to the contrary, the minimum hire period for any Personnel is 8 hours, unless a greater minimum period is required under any applicable award or industrial agreement.
- (d) You may request Personnel to work on weekends, public holidays, or outside of their usual working hours. Special rates may apply to such requests, available on request.
- (e) Where applicable, a travel charge may be payable in addition to the hourly charge rate, depending upon any applicable award or industrial agreement, and/or location of your site. We will notify you if a travel charge applies and will invoice you accordingly.
- (f) Any rates list attached to a Quotation or otherwise provided to you by us supersedes all other previous rates lists provided by us. We reserve the right to amend our fees, rates, prices, and/or rates lists applicable to our services from time to time and without prior notice to you (including to take account of changes in legislation).
- (g) We are responsible for PAYG tax deductions and the issuance of group certificates in relation to Personnel.

### 5.2 Payment

- (a) You must pay us the Fees as and when set out in the relevant Hire Contract, and as varied in accordance with this Agreement. We will issue you with a tax invoice (or tax invoices, as applicable) for the Fees.
- (b) At our sole discretion, a non-refundable deposit may be required prior to commencing any Services. This deposit may be calculated as a fixed amount or a percentage of the Fees, and will be stipulated in the Quotation or otherwise prior to us commencing any Services. We will invoice you for the deposit and will not commence Services until we have received the deposit in cleared funds.
- (c) In addition to the Fees, you must pay the following:
  - (d) any fees for Personnel working weekends, public holidays, or overtime under clause 5.1(d);
  - (e) any travel charges incurred under clause 5.1(e);
  - (i) any Out of Scope Fees for Out of Scope Services requested and performed under clause 4.1(f);
  - (ii) where pre-agreed, any expenses we incur on your behalf in the course of providing the Services, at cost plus 10% (or another expenses surcharge specified in the relevant Hire Contract);

### 5.3 Further payment provisions

- (a) Time for payment for the Services being of the essence, the Fees will be payable by you in cleared funds on the date/s determined by us, which may be:

- (i) the date specified on any invoice or other form as being the date for payment;
- (ii) the date specified in clause 6.1(a) (where applicable); or
- (iii) failing any notice to the contrary, the date which is 14 days following the date of any invoice given to you by us.
- (b) You may pay by cash, cheque, bank cheque, electronic/on-line banking, or credit card, excluding American Express and Diners, or by any other method as agreed between the parties. We reserve our right to pass on to you any surcharge payable by us for accepting the relevant payment method.
- (c) You are responsible for and must reimburse us for any transaction, processing, dishonour, or charge-back fees issued by a financial institution or payment gateway in the course of making payment.
- (d) Unless otherwise stated the Fees do not include GST. In addition to the Fees you must pay to us an amount equal to any GST we must pay for any supply by us under this Agreement for the sale of the Services. You must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as you pay the Fees. In addition, you must pay any other taxes and duties that may be applicable in addition to the Fees except where they are expressly included in the Fees.

### 5.4 Invoice disputes

- (a) If you reasonably believe that an invoice contains an error, and wish to dispute that invoice, you must:
  - (i) notify us within 7 days of receiving the invoice, and in any event before the due date of the invoice;
  - (ii) pay all undisputed fees on the invoice and any other outstanding invoice; and
  - (iii) provide detailed information about any disputed fees.
- (b) Provided you have complied with clause 5.4(a), we will not suspend or terminate any supply of Services for non-payment of the disputed fees while the dispute is being investigated.
- (c) For the sake of clarity, if you do not dispute an invoice under clause 5.4(a) within the required timeframe, you are deemed to have accepted the invoice.

**5.5 Default in payment**

Subject to clause 5.4, if you fail to pay any invoice or any part invoice by the due date (including any invoice on credit terms), then without prejudice to our other rights or remedies, until payment is made in full (including for any accrued interest):

- (a) we reserve our right to:
  - (i) charge for interest on all overdue amounts at a rate set out in the relevant Hire Contract (or otherwise at 2.5%) per calendar month, calculated and compounding daily;
  - (ii) immediately suspend the supply of any or all Services under this Agreement;
  - (iii) postpone any delivery or commencement date; and
- (b) all invoices will immediately become due and payable, regardless of whether or not they were otherwise due for payment at that time; and
- (c) you are liable by way of liquidated damages for all amounts payable under this clause plus all costs and expenses of debt collection and enforcement (on a solicitor and own client basis).



**6. Credit account****6.1 Credit Terms**

- (a) Payment of all accounts must be made on or before 30 days from the invoice date.
- (b) When making a payment, you agree:
  - (i) to forward your remittance advice to ensure the payment is allocated to your account in the correct manner; and
  - (ii) that if your payment does not reflect the invoice amount, a brief note must be included regarding any variations.
- (c) We may at any time without notice terminate or suspend your right to purchase Services from us on credit and will not be liable for any loss or damage incurred by you as a result of our non-supply of the Services.
- (d) Suspended accounts may attract a default account keeping fee of 2% per month or \$25.00 per invoice whichever is the greater amount until the account is returned to the agreed trading terms. You agree that this is a fair and reasonable charge and is directly relevant to the likely damage that we might suffer as a result of your non-payment.

**6.2 Credit History**

- (a) You authorise us to make enquiries as to the credit and financial responsibilities of you and/or your directors and/or shareholders in order to qualify your capacity to incur debt and repay any amounts to us. These enquiries may include but are not limited to obtaining reports from credit reporting agencies and references from current and/or past credit providers.
- (b) In accordance with section 18E(8)(c) of the Privacy Act, you acknowledge that we have informed you that certain items of personal information about you contained in/or relating to your application for credit, and permitted to be kept on a credit information file, might be disclosed to a credit reporting agency.
- (c) We will take all reasonable steps to protect your personal information from misuse, interference, and loss, as well as unauthorised access, modification, or disclosure in accordance with Australian Privacy Principle 11.1.
- (d) We will take all reasonable steps to destroy or de-identify your personal information held once it is no longer needed in accordance with Australian Privacy Principle 11.2.
- (e) You agree, in accordance with s18H(3), s18K(1)(b), s.18K(1)(c), s18K(1)(h) and s18N(1)(b) of the Privacy Act that our use of the relevant information referred to in those sections may occur for the purpose of assessing your credit application.
- (f) You may request to access the personal information we hold, or for your personal information to be corrected, by sending an email to [info@tradeconnex.com.au](mailto:info@tradeconnex.com.au) if you believe that we have breached our obligations in accordance with the Privacy Act in relation to the acquisition, storage, or disclosure of your personal information, you agree to send an email to

[info@tradeconnex.com.au](mailto:info@tradeconnex.com.au)

to discuss your concerns and allow us a reasonable time to address them before taking any further action.

**7. PPSA, Security and Charge****7.1 PPSA**

- (a) In this clause, collateral, financing statement, financing change statement, security agreement, and security interest have the meaning given to them by the

*Personal Properties Securities Act 2009* (Cth) (**PPSA**).

- (b) Upon assenting to this Agreement you acknowledge and agree that this Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all of your personal property (tangible or intangible) that you have an interest in at the time of assent, as well as property (tangible or intangible) acquired by you after the assent is made to secure the payment of our fees or any other amount owing under this Agreement from time to time.
- (c) We may register the security interest on the Personal Property Securities Register (**PPSR**) under the PPSA.
- (d) You agree that in accordance with section 125(3) of the PPSA, we may delay disposing or taking action to retain the whole or part of the collateral beyond the reasonable period.
- (e) You agree that in accordance with section 275 of the PPSA, neither party is required to provide interested persons with information relating to our security interest, unless required under the general law.
- (f) You agree and undertake:
  - (i) to sign any documents and/or provide further information reasonably required by us to register any financing statement or financing change statement on the PPSR;
  - (ii) to indemnify us for all expenses and/or costs incurred by us in registering any financing statement or financing change statement on the PPSR including the costs of amending, maintaining, releasing, and enforcing any security interest in the collateral;
  - (iii) not to register and/or make a demand to alter a financing statement in the collateral without our prior written consent;
  - (iv) to provide us with 7 days' Written Notice of any change or proposed change to your name (including company name if applicable), address, contact details, or other changes in your details as registered on the PPSR;
  - (v) in accordance with section 115 of the PPSA, to contract out of enforcement provisions relating to collateral not used predominantly for personal, domestic, or household purposes;
  - (vi) in accordance with sections 142 and 143 of the PPSA, to waive your rights as a grantor and/or debtor;
  - (vii) in accordance with section 144 of the PPSA, to waive any rights to receive notices under sections 95, 118, 121, 130, 132 or 135 of the PPSA; and
  - (viii) in accordance with section 157 of the PPSA, to waive any rights to receive a verification statement.

**7.2 Security and Charge**

- (a) In consideration of us agreeing to supply the Services, you charge the whole of your undertaking, property, and assets (including without limitation all of your interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired, to secure your performance of your obligations under these Terms.
- (b) You irrevocably appoint us and each of our directors (as applicable) as your true and lawful attorney/s to do all things necessary to create and register each such charge, including but not limited to, signing any document on your behalf.
- (c) Upon our demand, you agree to immediately execute a mortgage or other

instrument in terms satisfactory to us to further secure payment of the money payable by you.

- (d) If you fail within 14 days of such demand to execute such mortgage or other instrument, then you acknowledge that we may execute such mortgage or other instrument as your attorney pursuant to clause 7.2(b).
- (e) You indemnify us from and against all our costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising our rights under this clause.

**8. Confidentiality and Intellectual Property****8.1 Confidentiality**

- (a) The recipient of any Confidential Information must keep such information secret and confidential and must not disclose it to any third party without written consent of the disclosing party. The recipient of any Confidential Information must take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and to prevent disclosure, including obtaining confidentiality agreements from its employees, agents, and other contractors.
- (b) Despite clause 8.1(a), either party may use or disclose Confidential Information strictly to the extent necessary to carry out its obligations under this Agreement, comply with any law, binding directive of a regulator or a court order, comply with the listing rules of any stock exchange on which its securities are listed, or obtain professional advice where the advisors agree to be bound by the same obligation of confidentiality.

**8.2 Intellectual Property**

- (a) Unless otherwise agreed, each party retains ownership of all Intellectual Property rights in material owned or created by that party prior to or independently of this Agreement and no such Intellectual Property is assigned or transferred by way of this Agreement.
- (b) The parties agree that all IP rights in the Deliverables, in any other material developed by us under this Agreement, and in any

improvements, modifications or enhancements or other material developed by us in the course of supplying the Services, will vest in and are owned by us upon creation, even if based on your comments, requests, or feedback.

## **9. Disclaimers and Limitation of Liability**

### **9.1 Disclaimers**

- (a) We endeavor to provide accurate background on Personnel qualifications and experience. However, these details are based on information made available by Personnel and referees provided by Personnel. We accept no liability for errors, omissions, or incorrect conclusions in relation to Personnel qualifications, experience, and suitability.
- (b) While we make every effort to supply Personnel that are suitable for your needs we do not warrant or guarantee their suitability. You must satisfy yourself as to

whether the Personnel is/are suitable for the proposed work to be undertaken.

- (c) We do not guarantee that Personnel will remain available once a Hire Contract commences. We are not liable to you for any loss or damage if any Personnel becomes unavailable for any reason, although we will endeavor to replace such Personnel for the duration of the Hire Contract.
- (d) Other than as set out in this Agreement, and to the fullest extent allowable at law, we do not warrant or guarantee:
  - (i) the supply of Services is uninterrupted or error free;
  - (ii) the Services for any standard, quality, fitness, suitability, performance, or compatibility;
  - (iii) that use of the Services will bring you into compliance with any particular legislation or standard;
  - (iv) that you will achieve any specific or general results by use of the Services.
- (e) You must satisfy yourself as to the standard, quality, and suitability of the Services for the purpose(s) for which they are being purchased.

## 9.2 Indemnity

- (a) You agree to release and hold harmless, indemnify and defend us and our Indemnified Officers against any Claim or Liability from or in relation to:
  - (i) your breach of any law or infringement of any third-party rights;
  - (ii) your breach of your obligations or warranties under this Agreement;
  - (iii) your instructions causing us to be in breach of any law or to infringe any third-party rights;
  - (iv) in consideration of Personnel being under your practical day-to-day care, control, supervision, and direction from the time they report to you for duties and for the duration of their placement with you, any loss of or damage to persons or property arising:
    - (v) from or on your site;
    - (A) in connection with tasks undertaken by Personnel (whether or not authorised by you); and
    - (B) in connection with the acts, errors, and omissions of Personnel, whether accidental, wilful, negligent, or otherwise.
- (b) You agree to release and hold harmless us and our Indemnified Officers against any Claim or Liability arising from or in relation to:
  - (i) the acts or omissions of you or any third parties;
  - (ii) any Force Majeure Event;
  - (iii) any circumstances outside of our control;
  - (iv) us exercising any of our rights under this Agreement; and
  - (v) actions taken in relation to this Agreement in accordance with our obligations at law or any order issued by a court of law or relevant government authority, whether directly or indirectly arising in connection with the Services, even if we knew or should have known about the possibility of such Claim or Liability.
- (c) You indemnify us for any reasonable legal expenses we incur as a result of your breach of this Agreement, including expenses for enforcement, on a solicitor and own-client basis.

## 9.3 Defence

We reserve the right, at our own expense, to assume the exclusive defence and

control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defences.

## 9.4 Limitation of Liability

- (a) Under applicable State, Territory and Commonwealth Law (including, without limitation the *Competition and Consumer Act 2010* (Cth) (CCA)), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into this Agreement and cannot be excluded by contract (**Non-Excluded Guarantees**).
- (b) We acknowledge that nothing in this Agreement excludes, restricts, or modifies or has the effect of excluding, restricting or modifying any Non-Excluded Guarantees.
- (c) Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, we make no warranties or other representations under this Agreement including but not limited to the quality or suitability of the Services. Our liability in respect of these warranties is limited to the fullest extent permitted by law.
- (d) If you are a consumer within the meaning of the CCA, our liability is limited to the extent permitted by section 64A of Schedule 2. That is:
  - (i) our liability, and the liability of our Indemnified Officers under these Terms is limited to (at our election):
    - (A) supplying the affected Services again; or
    - (B) payment of the cost of having the affected Services supplied again; and
  - (ii) indirect, special, pure economic or Consequential Loss (whether arising under contract or tort) are expressly excluded under this Agreement.
- (e) If you are not a consumer within the meaning of the CCA:
  - (i) our liability, and the liability of our Indemnified Officers under these Terms is (at our sole discretion):
    - (A) limited to the value of any express warranty provided to you by us; or
    - (B) limited to a refund (which may be provided in the form of credit for future services) or resupply of affected Services, or the cost of resupplying the affected Services (at our sole discretion); or
    - (C) otherwise negated absolutely; and
  - (ii) indirect, special, pure economic, or Consequential Loss (whether arising under contract or tort) are expressly excluded under this Agreement.
- (f) If we are required to resupply the Services under this clause or the CCA, but are unable to do so, we may refund any money you have paid for the Services.
- (g) Despite any other provision to the contrary, you agree that our total liability and the total liability of our Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed an amount equivalent to the money you have paid to us for the affected Services under this Agreement.
- (h) The limitation of liability under this clause 9.4 has effect in relation both to any Liability expressly provided for under these Terms and to any Liability arising by reason of the invalidity or unenforceability of any term of these Terms.

## 10. Suspension and Termination



**10.1 Suspension**

- (a) Without prejudice to any other remedies we may have, we may suspend the supply of Services under any or all Hire Contracts and issue you with a Default Notice if you are in breach of any obligation (including those relating to payment) under this Agreement.
- (b) Suspension under this clause does not affect your liability to make payment and will immediately end when the issue giving rise to the suspension is remedied.

**10.2 Termination for convenience**

- (a) Either party may immediately and for any reason by Written Notice to the other party:
  - (i) cancel any one or more Services under any one or more Hire Contracts;
  - (ii) terminate any one or more, or all, Hire Contracts in their entirety (and if all, these Terms will also be terminated); or
  - (iii) terminate these Terms, but in the case of clause 10.2(a)(iii), the termination date of these Terms will be the date on which every Hire Contract between the parties has either expired or been validly terminated.
- (b) You may, within 1 hour of any Personnel reporting for duties, notify us the Personnel is unsuitable and cancel any Services relating to that Personnel without penalty. We will waive any Fees relating to the unsuitable Personnel.

**10.3 Termination for default**

Either party may terminate these Terms immediately by Written Notice if the other party:

- (a) fails to remedy a Default Notice;
- (b) experiences an Insolvency Event; or
- (c) is guilty of dishonesty, serious misconduct, or serious neglect of duty.

**10.4 Consequences of Termination**

- (a) If either party exercises its rights under clauses 10.2 or 10.3, then in addition to any other rights the parties may have:
  - (i) we may issue an invoice for any Services delivered and not previously invoiced, which will be immediately due and payable;
  - (ii) you must pay all outstanding invoices whether or not due;
  - (iii) where you have paid in advance for any Services, and except where we have exercised our rights under clause 10.3, we will refund to you any unused portion of fees you have paid to us for those Services;
  - (iv) we retain the right to offset any amount payable to you under this Agreement against any amount you owe to us under this Agreement.
- (b) A party not in default may pursue any other rights or remedies available at law against a defaulting party, subject to clause 9.

**11. General**

- (a) You are responsible for all duties, charges and legal fees (on a solicitor and own client basis) incurred in enforcing this Agreement.
- (b) The parties' rights and obligations under clauses 3.1(c), 3.2, 3.4, 5.2, 5.3, 5.5, 6, 7, 8, 9, 10.4, and 11 will survive the termination of this Agreement for whatever reason.



- (c) This Agreement is governed by the laws of the state of New South Wales and is subject to any competent court of the jurisdiction of the courts in that state and courts competent to hear appeals from those courts.
- (d) If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it will not affect the validity or enforceability of any other provision or part provision of this Agreement.
- (e) Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.
- (f) This Agreement contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the subject matter of this Agreement.
- (g) We may assign or novate our rights and obligations under this Agreement at any time by notice to you. Upon assignment or novation, our rights and obligations are binding on and will benefit our respective representatives, successors and assigns.
- (h) You must not assign or novate your rights and obligations under this Agreement without our written consent.
- (i) You are not entitled to set off against, or deduct from the Fees any sums owed or claimed to be owed to you by us.
- (j) Nothing in this Agreement constitutes a partnership or contract of employment. It is the express intention of the parties to deny any such relationship.
- (k) If a party is affected by a Force Majeure Event, they must immediately notify the other party of the circumstances. The parties' obligations under this Agreement are suspended for the duration of and to the extent that they are affected by the Force Majeure. However, either party may end this Agreement if the Force Majeure continues for more than 21 days.
- (l) This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Agreement.

## **12. Definitions and Interpretation**

### **12.1 Definitions**

In this Agreement:

- (a) **Agreement** means the agreement between the parties, comprising the documents as set out in clause 2(g).
- (b) **Business Hours** means 6.00 am to 6.00 pm AEST, Monday to Friday
- (c) **Claim** means a claim notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a party to these Terms or a third party.
- (d) **Confidential Information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation: any kind of technical, financial or business information; details of Personnel, employees, suppliers, or customers; material developed under these Terms;

loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss, and disappointment, distress, stress, and inconvenience.

- (f) **Credit Account Arrangement** means any arrangement agreed by the parties for us to supply Services to you under a payment plan or in advance of payment.
- (g) **Default Notice** means a Written Notice that states that it is a notice of default, specifies the default with sufficient detail and particulars, and gives a reasonable deadline by which the default must be remedied, of not less than 5 Business Days.
- (h) **Force Majeure Event** means an unforeseen event beyond the control of the affected party, including an act of god, war, terrorism, riot, vandalism, hacking, industrial action, or law or actions of any government or governmental agency.
- (i) **Hire Contract** means an accepted Quotation, including any variations in writing to the Quotation, and sets out the scope of Services that we have agreed to provide and that you have agreed to pay for.
- (j) **Indemnified Officers** means, in relation to a party, its directors, employees, contractors, agents and representatives.
- (k) **Insolvency Event** means in relation to a party means any of the following:
  - (i) the other party reasonably believes the party is unable to meet its financial obligations under this Agreement;
  - (ii) the party enters into a scheme of arrangement with its creditors, or is wound up or dissolved, or an administrator, liquidator, or receiver is appointed, or it is placed under official management, or commits an act of bankruptcy;
  - (iii) the party is charged with a criminal offence; or
  - (iv) judgment is entered against the party for more than \$20,000.00, which remains unsatisfied or unappealed for more than 21 days.
- (l) **Intellectual Property** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
- (m) **Liability** means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.
- (n) **Out of Scope Fees** means the fees applicable to any Out of Scope Services.
- (o) **Out of Scope Services** means all services outside any Scope of a Hire Contract.
- (p) **Personnel** means any person we supply to you under this Agreement, including our employees and contractors.
- (q) **Fees** means the fees payable for the

- (t) **Specific Exclusions** means the exclusions to the relevant scope of Services as set out in a Hire Contract.
- (u) **Terms** means this document including schedules and appendices, if any.
- (v) **We, Us, Our** are references to Tradeconnex, our successors and assigns or any person acting on our behalf and with our authority.
- (w) **Written Notice, In Writing** means providing information in writing, including by email.
- (x) **You, Your** are references to the person/s purchasing the Services as specified in any Quotation invoice, document, or order, and if there is more than one person, 'You' is a reference to each person jointly and severally.

### **12.2 Interpretation**

- (a) If something comes within the meaning of Confidential Information in this Agreement and Intellectual Property in this Agreement, and there is any conflict in this Agreement regarding its provisions concerning Intellectual Property and Confidential Information, the provisions concerning Intellectual Property prevail.

## **13. Acknowledgement**

- (a) You acknowledge that you have carefully read, fully understood and agreed to be bound by all the provisions of this Agreement.
- (b) We will not be liable for any loss and/or damages suffered whatsoever, whether directly and/or indirectly, from your failure to obtain independent legal advice in relation to this Agreement.

and Intellectual Property, concepts, know-how and trade secrets, but excludes information in the public domain (other than by default under these Terms) or information independently known to the other party.

- (e) **Consequential Loss** includes, without limitation, data loss, loss of opportunity,

Services as agreed between the parties in



accordance with clause 5.

(r) **Quotation**  
means the  
document we  
send to you  
setting out the  
proposed  
services and  
applicable  
fees.

(s) **Services**  
means you  
services you  
request, order,  
or purchase  
from us from  
time to time in  
accordance  
with these  
Terms.