

RECITALS

- A. The Client wishes to receive adult learning consulting services as set out in the Quotation provided.
- B. The Consultant has the skills, background and experience in providing the adult learning consulting services set out in the Quotation.
- C. The Client wishes to engage an independent contractor to provide the adult learning consulting services to the Client.
- D. The Consultant is willing to provide the adult learning consulting services and the Client is willing to appoint the Consultant to provide the adult learning consulting services, all in accordance with the Quotation incorporating the provisions of these Consultancy Terms & Conditions (the 'Agreement').

1. Definitions and interpretation

1.1. Definitions

In these Consultancy Terms & Conditions unless the context indicates otherwise, the following words shall have the following meanings:

Background IP means all intellectual property and Material owned by, or licensed to, a Party that arose independently of the Agreement;

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise);

Commencement Date is as set out in the Quotation;

Completion Date is as set out in the Quotation, or such other date as the Parties may agree;

Confidential Information includes any information marked as confidential and any information received or developed by the Consultant during the term of the Agreement which is not publicly available and relates to processes, equipment and techniques used by the Client in the course of the Client's business including all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, Agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans;

The Consultant means TechKnowledgegy Pty Ltd as Trustee for The Tornado Trust (ACN 105 814 122) of Suite 1, Level 2, Riverside Quay 1 Southbank Boulevard, Southbank, Victoria, 3006;

The Consultant's Personnel means any person(s) that the Consultant designates to perform the Services on the Consultant's behalf;

Contract Material means all Material developed or created by the Consultant for the purpose of providing the adult learning consulting services under the Quotation and these Consultancy Terms & Conditions;

Facilities means facilities as required by the Consultant from time to time in performing the adult learning consulting services and as set out in the Quotation, in accordance with clause 6 of these Consultancy Terms & Conditions;

Fee(s) means the fee out in the Quotation;

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property means:

- a) all rights in copyright, trade marks (including service marks), trade and service names, designs, circuit layouts, patents, inventions, discoveries and rights of confidence; and
- b) all other rights or forms of protection of a similar nature or having similar or equivalent effect to any of them, whether under international convention or otherwise,

that may subsist anywhere in the world, whether current or future or registered (including applications for any of the above) or unregistered.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever;

Material includes any data, information and other documents (including electronic documents) and software;

Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work and the right not to have authorship of a work falsely attributed, which rights are created by the *Copyright Act 1968* (Cth);

Parties means the Consultant and the Client, and Party shall mean either one of them;

Purpose is as set out in the Quotation;

Related Body Corporate has the meaning given in section 50 of the *Corporations Act 2001* (Cth);

Specification means the specific adult learning consulting services to be provided by the Consultant under the Quotation incorporating these Consultancy Terms & Conditions. The Specification is set out in the Quotation;

Termination Date means the earlier of:

- c) the date of termination of the Agreement by the Client or the Consultant; and
- d) the date of expiry of the Agreement.

1.2. Interpretation

In these Consultancy Terms & Conditions unless the context otherwise requires:

- a) words importing any gender include every gender;
- b) words importing the singular number include the plural number and vice versa;
- c) words importing persons include firms, companies and corporations and vice versa;
- d) references to numbered clauses, paragraphs and schedules are references to the relevant clause, paragraph or schedule to these Consultancy Terms & Conditions;
- e) reference in any schedule to these Consultancy Terms & Conditions to numbered paragraphs relate to the numbered paragraphs of that schedule;
- f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- g) the headings to the clauses and schedules of these Consultancy Terms & Conditions are not to affect the interpretation;
- h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- i) the word "including" (and related forms including "includes") shall be understood as meaning "including without limitation".

2. Consultancy services

- a) The Consultant shall provide the adult learning consulting services for the Purpose and as the Parties may agree from time to time to the Client in consideration for the Client paying the Fee to the Consultant, subject to the Quotation incorporating the provisions of these Consultancy Terms & Conditions.
- b) The Consultant shall use reasonable endeavours to complete the adult learning consulting services by the Completion Date or any other dates agreed by the Parties.
- c) The adult learning consulting services shall be performed by such employees or agents that the Consultant may choose as most appropriate to carry out the adult learning consulting services as agreed, from time to time by the Parties.

- d) The adult learning consulting services to be performed as agreed by the Parties, and the Fee(s) shall be set out in the Specification.

3. Location

The Consultant shall provide the adult learning consulting services in such locations and at such times as the Consultant considers appropriate to the type and nature of the requirements of The Client.

4. Fee(s)

- a) In consideration of the provision of the adult learning consulting services in accordance with the Quotation incorporating these Consultancy Terms & Conditions, the Client will pay the Consultant the Fee(s).
- b) The Client acknowledges that the Fee(s) shall be exclusive of any GST that may be charged by the Consultant to The Client, and therefore, the Consultant will be entitled to add on GST.
- c) The Consultant shall provide the Client with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 4, and payment shall be made by The Client to the Consultant within 10 days following receipt of the Consultant's invoice.
- d) The invoice referred to in paragraph (c) must include the following details before payment can be approved and forwarded:
 - (i) date of adult learning consulting services;
 - (ii) description of adult learning consulting services provided;
 - (iii) time allocated per task; and
 - (iv) the ABN of the Consultant.
- e) The Consultant is permitted to charge for all costs and expenses incurred in performing the adult learning consulting services, including the expenses set out in the Quotation and as agreed by the Parties from time to time.
- f) If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the Consultancy Terms & Conditions, the Consultant shall be entitled to do any of the following:
 - (i) charge interest on the outstanding amount at the rate of 10% per year, accruing daily;
 - (ii) require the Client to pay, in advance, for any adult learning consulting services (or any part of the adult learning consulting services) which have not yet been performed; and
 - (iii) not perform any further adult learning consulting services (or any part of the adult learning consulting services).

- g) When making a payment the Client shall quote relevant reference numbers and the invoice number.

5. The Consultant's personnel

- a) The Client may, at any time, if it has reasonable grounds which have been disclosed and discussed with the Consultant, by notice in writing to the Consultant, require the Consultant to cease to permit a particular person or persons employed by the Consultant or acting as agents of the Consultant to carry out the adult learning consulting services.
- b) If the Client makes the requirement referred to in paragraph (a), the Consultant must, as soon as it is practicable, cease to provide the service of the particular person or persons in respect of the Client's business and provide the services of an alternative person or persons as may be reasonably acceptable to the Client.

6. The Client's obligations

- a) During the preparation of the Specification and performance of the adult learning consulting services the Client will:
 - (i) co-operate with the Consultant as the Consultant reasonably requires;
 - (ii) provide the information and documentation that the Consultant reasonably requires;
 - (iii) make available to the Consultant such Facilities as the Consultant reasonably requires; and
 - (iv) ensure that the Client's staff and agents co-operate with and assist the Consultant.
- b) The Client will not charge for the Consultant's use of the Facilities made available by The Client.
- c) If the Client does not provide the Facilities that the Consultant reasonably requires (and within the time period) to perform the adult learning consulting services, then any additional costs and expenses which are reasonably incurred by the Consultant will be paid by the Client.

7. No employment relationship

Nothing in these Consultancy Terms & Conditions constitutes the relationship of employer and employee between The Client and the Consultant or between the Client and the Consultant's Personnel. It is the express intention of the Parties that any such relationships are denied.

8. Use of subcontractors

- a) The Consultant is permitted to use other persons to provide some or all of the adult learning consulting services.
- b) The Consultant shall be responsible for the work of any of the Consultant's subcontractors.
- c) Subject to paragraph (d), any work undertaken by any of the Consultant's subcontractors shall be undertaken to the same standard stated as agreed by the Parties.
- d) To the extent that the terms of any subcontract stipulate a higher standard for any of the adult learning consulting services than the standards set out in the Specification (including as to timing or quality), any adult learning consulting services provided by the relevant subcontractor will be governed by the terms and conditions of that subcontractor's subcontract.

9. Intellectual Property Rights

- a) The Client acknowledges that the Consultant remains the owner of all Consultant Background IP.
- b) The Consultant grants the Client a non-exclusive, royalty-free licence to use all Consultant Background IP to the extent necessary to enable the Client to exercise rights in the Contract Material.
- c) The Consultant acknowledges that the Client remains the owner of all Client Background IP.
- d) The Client grants the Consultant a non-exclusive, royalty-free licence to use supplied Client Background IP to the extent necessary to enable the Consultant to provide the adult learning consulting services in accordance with these Consultancy Terms & Conditions.
- e) All Contract Material shall be vested in the Consultant and shall be the Consultant's property as and when created (including any Contract Material created prior to or after the date of this Contract).
- f) The Consultant grants the Client a perpetual, royalty-free, non-exclusive licence to use the Contract Material for the Purpose of the contract.
- g) The rights and obligations in this clause survive termination or expiry of the Agreement and these Consultancy Terms & Conditions.

10. Confidentiality

- a) The Consultant must keep the Client's, and any Related Body Corporate of the Client's, Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.

- b) The Client and the Consultant acknowledge that information resulting from the activities of the Consultant pursuant to these Consultancy Terms & Conditions shall also be regarded as Confidential Information and the Consultant agrees that the Consultant's obligations in paragraph (a) extend to this category of information.
- c) The Consultant's obligations with regard to the Confidential Information will continue for so long as the Confidential Information is maintained on a confidential basis by:
 - (i) The Client, in the case of Confidential Information pertaining to the Client's business; and
 - (ii) The Client's client, in the case of Confidential Information pertaining to the business of any of the Client's clients.
- d) At the Termination Date when directed by the Client, or when earlier directed by the Client:
 - (i) all Confidential Information must be returned to the Client, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the Consultant makes and any software that the Consultant creates based on the Confidential Information; and
 - (ii) the Consultant must erase and destroy any copies of any software containing or comprising the Confidential Information in the Consultant's possession or under the Consultant's control or that may have been loaded onto a computer possessed or controlled by the Consultant.
- e) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of paragraph (a) by the Consultant; or
 - (ii) was known by the Consultant prior to the Client disclosing the information to the Consultant.
- f) The Consultant agrees that the Client may require any of the Consultant's Personnel to sign a confidentiality agreement in a form that the Client approves, as a condition of the Client's acceptance of any of the Consultant's Personnel.
- g) The obligations accepted by the Consultant under this clause survive termination or expiry of the Agreement and these Consultancy Terms & Conditions.

11. Warranties, liability and indemnities

- a) The Consultant warrants that it will use reasonable care and skill in performing the adult learning consulting services and to the standard generally accepted within the industry, sector or profession in which the Consultant operates for the type of adult learning consulting services provided by the Consultant.
- b) If the Consultant performs the adult learning consulting services (or any part of the adult learning consulting services) negligently or materially in breach of these Consultancy Terms & Conditions including any part of the Specification, then, if requested by the Client, the Consultant will re-perform the relevant part of the adult learning consulting services, subject to paragraphs (h) and (i) below.
- c) The Client's request referred to in paragraph (b) must be made within 7 days of the date the Consultant completed performing the adult learning consulting services.
- d) The Consultant shall effect all insurance required to be effected by law including worker's compensation insurance as prescribed by law for the Consultant's Personnel and public liability insurance for a minimum of an amount to be agreed for each occurrence.
- e) The Consultant covenants that the Consultant shall be solely responsible for the payment to the Consultant's employees and agents of all amounts due by way of salary, superannuation, annual leave, long service leave and any other benefits to which they are entitled as the Consultant's employees or agents and to otherwise comply with legislation applicable to the Consultant's employees and agents.
- f) Throughout the continuance of the Agreement and these Consultancy Terms & Conditions the Consultant shall comply at the Consultant's own cost and expense with all Acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements of any Commonwealth, State and Local Government departments, bodies, and public authorities or other authority so far as the same may affect or apply to the Consultant or to the adult learning consulting services, and the Consultant shall indemnify the Client from and against all actions, costs, charges, claims and demands in respect thereof.
- g) The Consultant provides no warranty that any result or objective can or will be achieved or attained at all by the Completion Date or any other date, whether stated in the Quotation these Consultancy Terms & Conditions or elsewhere.
- h) Except in the case of death or personal injury caused by the Consultant's negligence, the liability of the Consultant under or in connection with these Consultancy Terms & Conditions whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the Fee(s) paid by the Client to the Consultant under these Consultancy Terms & Conditions. The provisions of this paragraph (h) shall not apply to paragraphs (f) and (j).

- i) Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this paragraph (i) shall not apply to paragraphs (f) and (j).
- j) The Client shall indemnify and hold harmless the Consultant from and against all Claims and Losses arising from loss, damage, liability, injury to the Client, its employees and third parties, infringement of third party intellectual property rights, or third party losses by reason of or arising out of any services, information or advice supplied to the Client by the Consultant, its employees or agents, or supplied to the Consultant by the Client within or without the scope of these Consultancy Terms & Conditions.
- k) Each of the Parties acknowledges that, in entering into these Consultancy Terms & Conditions, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Consultancy Terms & Conditions, and any conditions, warranties or other terms implied by statute or common law are excluded from these Consultancy Terms & Conditions to the fullest extent permitted by law.
- l) The Consultant must supply the Client with evidence of the Consultant's ABN and must include this number on any invoice provided to the Client. The Consultant acknowledges that if the Consultant fails to provide an ABN, then the Client is entitled to withhold any proportion of the payments to the Consultant as may be required under the relevant law for tax purposes, until such time as the Consultant provides its ABN to the Client..
- m) The Consultant warrants that the Consultant has no authority to engage the services of any person as an employee or agent of the Client.
- n) The Consultant warrants that the Consultant shall not incur any liability on behalf of the Client or in any way pledge or purport to pledge the Client's credit or accept any other or make any contract binding upon the Client without prior approval being given by the Client.
- o) The obligations accepted by the Consultant and the Client under this clause survive termination or expiry of the Agreement and these Consultancy Terms & Conditions.

12. Termination

- a) Either Party may terminate the Agreement and these Consultancy Terms & Conditions by notice in writing to the other if the other Party notified fails to observe any term of the Agreement and these Consultancy Terms & Conditions and fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of 7 days notice of the breach being given in writing by the notifying Party to the other Party.

- b) Either Party may terminate the Agreement and these Consultancy Terms & Conditions upon the happening of any of the following events:
 - (i) the giving of written notice of at least 7 days by one Party to the other Party of the intention to terminate the Agreement and these Consultancy Terms & Conditions;
 - (ii) if The Client enters into a deed of arrangement or an order is made for it to be wound up;
 - (iii) if an administrator, receiver or receiver/manager or a liquidator is appointed to The Client pursuant to the *Corporations Act 2001* (Cth); or
 - (iv) if The Client would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001* (Cth).
- c) The Client may, at its discretion, pay to the Consultant the equivalent amount of the fees payable by the Client to the Consultant during the notice period in lieu of any notice period relating to termination of these Consultancy Terms & Conditions under paragraph (b)(i).
- d) Upon termination of these Consultancy Terms & Conditions any fees, expenses or reimbursements payable by the Client to the Consultant in respect of any period prior to the Termination Date must be paid by The Client within 10 days after the Termination Date.

13. General

13.1. Force majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement and these Consultancy Terms & Conditions for any delays or failures in performance of the Agreement and these Consultancy Terms & Conditions which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate the Agreement and these Consultancy Terms & Conditions by written notice to the other Party.

13.2. Amendments

The Agreement and these Consultancy Terms & Conditions may only be amended in writing signed by duly authorised representatives of the Parties.

13.3. Assignment

- a) Subject to paragraph (b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Agreement and these Consultancy Terms & Conditions without the prior written agreement of the other Party.

- b) A Party may assign and transfer all its rights and obligations under the Agreement and these Consultancy Terms & Conditions to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under the Agreement and these Consultancy Terms & Conditions.

13.4. Entire Agreement

- a) The Quotation incorporating these Consultancy Terms & Conditions contains the whole Agreement between the Parties in respect of the subject matter of the Specification, and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter.
- b) The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Quotation and these Consultancy Terms & Conditions.

13.5. Waiver

- a) No failure or delay by the Consultant in exercising any right, power or privilege under the Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- b) The rights and remedies provided in the Agreement and these Consultancy Terms & Conditions are cumulative and not exclusive of any rights and remedies provided by law.

13.6. Agency, partnership etc

- a) The Agreement and these Consultancy Terms & Conditions shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement and these Consultancy Terms & Conditions.
- b) Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

13.7. Further assurance

Each Party to the Agreement and these Consultancy Terms & Conditions shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Agreement and these Consultancy Terms & Conditions or to make it easier to enforce.

13.8. Severance

If any provision of the Agreement and these Consultancy Terms & Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and these Consultancy Terms & Conditions and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and these Consultancy Terms & Conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement and these Consultancy Terms & Conditions.

13.9. Announcements

- a) Subject to paragraph (b), no Party shall issue or make any public announcement or disclose any information regarding the Agreement and these Consultancy Terms & Conditions unless prior to such public announcement or disclosure it furnishes the other Party with a copy of such announcement or information and obtains the approval of the other Party to its terms.
- b) No Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

13.10. Notices

A notice or other communication connected with the Agreement and these Consultancy Terms & Conditions has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in the Quotation, or sent by facsimile to the facsimile number of the addressee.

13.11. Work, health and safety

The Client is committed to providing a healthy, safe and clean workplace for its employees, contractors and visitors. The Client's goal is to foster and sustain a positive safety culture. The Client's commitment is implemented through its work health and safety (WHS) policy and underpinned by a set of WHS and operational procedures throughout The Client. The Consultant is required to comply with all relevant work, health, safety and welfare standards and regulations determined by The Client or as prescribed by legislation.

13.12. Law and jurisdiction

The Agreement and these Consultancy Terms & Conditions take effect, are governed by, and shall be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

13.13. Resources supplied by the Client

The Client's staff and agents must co-operate with and assist the Consultant as project stakeholders, within the meaning of section 6 of the Agreement and these Consultancy Terms & Conditions.

13.14. Expenses

All travel and accommodation, equipment hire, venue and/or venue staff hire, printing, postage and catering expenses, incurred exclusively in the course of and for the purposes of providing the adult learning consulting services, must be approved in writing by the Client, prior to being passed on to the Client.