

Terms & Conditions

Content Supply Agreement

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, the following words have the following meanings, unless expressly agreed otherwise:

Agreement means Part A and Part B of this Content Supply Agreement.

Australian Consumer Law means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Authorised Purposes means as set out in Part A.

Business Day means Monday to Friday excluding public holidays in Sydney.

Business Hours means 9:00am to 5:00pm on Business Days.

Commencement Date means as set out in Part A.

Confidential Information means any information or document about or in any way relating to the terms of this Agreement or the Licensor in any media or form that is acquired by or made available to the Licensee in the course of the relationship between the Parties, including but not limited to any information or documents about the Content, the Licensor's business, organisational structure, activities, operating procedures, products and services, trade secrets and know how, finances, plans, transactions and policies.

Content means as set out in Part A and includes any and all data, text, software, images, audio or video and other content, in any medium, delivered to the Licensee by JCS pursuant to this Agreement.

Content Supply Facility means the Content Supply Facility as set out in Part A.

Content Supply Timetable means the timetable for the supply of the Content by JCS to the Licensee, as set out in Part A.

Fees means as set out in Part A.

Force Majeure Event means war, strike, lockout, natural disaster, flood, earthquake, act of God, or other circumstances beyond the reasonable control of JCS.

Format means as set out in Part A.

GST has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth)).

Initial Term means as set out in Part A.

Insolvency Event means: (a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency; (b) where the party is a company, a resolution is passed or Court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law; (c) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or (d) the party is unable to pay its debts as and when they fall due.

Intellectual Property Rights means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organization, and all rights to enforce any of the foregoing rights.

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Licence means the licence granted under the provisions of clause 2.

Payment Terms means as set out in Part A.

Part A means the section marked "Part A – Commercial Terms" of this Agreement.

Part B means this document.

Personal Property Securities Register means the Personal Property Securities Register established under the Personal Property Securities Act 2009 (Cth).

Renewal Term means as set out in clause 3.2.

Term means the Initial Term and any Renewal Terms.

1.2 Interpretation

In this Agreement:

- (a) Headings and underlinings are for convenience only and do not affect the construction of this Agreement.
- (b) A provision of this Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision.
- (c) Currency refers to Australian Dollars.
- (d) A reference to a statute or regulation includes amendments thereto.
- (e) A reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of this Agreement.
- (f) A reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made.
- (g) The recitals are correct and form part of this Agreement.
- (h) A reference to time is to time in Sydney.
- (i) A reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity.
- (j) The words "includes", "including" and similar expressions are not words of limitation.

2. Content Licence

2.1 JCS grants to the Licensee a non-exclusive, non-transferable licence to use the Content for the Authorised Purposes during the Term in accordance with the provisions of this Agreement.

2.2 The Licensee agrees that it will not use and/or disclose the Content other than for the Authorised Purposes.

3. Term of Licence

3.1 The Licence commences on the Commencement Date and shall continue for the Initial Term.

3.2 Upon expiry of the Initial Term, the Licence shall automatically renew for subsequent terms each equivalent to the length of the Initial Term (each a "**Renewal Term**"), until and unless terminated earlier:

- (a) by either party providing at least 30 days written notice prior to the expiry of the Initial Term or the then subsequent Renewal Term, in which case if such notice is provided the Licence and

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this Agreement will terminate at the expiry of the Initial Term or (where applicable) the then current Renewal Term; or

(b) otherwise in accordance with this Agreement.

4. Supply of Content

- 4.1 The Licensee must ensure, at its sole cost and expense, that it has configured its computer systems so as to enable them to accept delivery of the Content in the Format through the Content Supply Facility.
- 4.2 Subject to clause 5, JCS must use reasonable endeavours to deliver the Content to the Licensee in the Format using the Content Supply Facility in accordance with the Content Supply Timetable.
- 4.3 The Licensee acknowledges that JCS does not represent, warrant or guarantee that the Content will be accurate or error-free.

5. Availability of Content

- 5.1 The availability of the Content to the Licensee will be subject, in addition to any other provisions set out in this Agreement, to any bandwidth limitations, database size limitations, throughput limitations and other limitations, requirements and/or restrictions specified in Part A. The Licensee must comply with all such limitations, requirements and restrictions.
- 5.2 The Licensee agrees and acknowledges that the accessibility of the Content is highly dependent on the proper function of the Internet and any other computer and telecommunications networks and infrastructure upon which the Content Supply Facility and/or the Content are provided to and/or from JCS.
- 5.3 Except in respect of any Non-Excludable Guarantee, JCS does not guarantee that the Content or the Content Supply Facility will be uninterrupted or error-free and the Licensee releases and indemnifies JCS in respect of any loss and damage JCS may incur and/or claims and/or complaints the Licensee or third parties may have against JCS in respect of any interruption, error or unavailability of the Content and/or in respect of any failure of JCS to comply with the Content Supply Timetable.

6. Fee

- 6.1 The Licensee must pay the Fees to JCS in accordance with the Payment Terms.
- 6.2 The Fees are exclusive of all taxes, duties and customs including GST.

7. Acknowledgements, Warranties and Representations

- 7.1 The Licensee acknowledges, agrees, warrants and represents that:
 - (a) it has legal capacity, power and authority to enter into this Agreement;
 - (b) the Licensor owns or has license to use all intellectual property rights in the Content and by entering into this Agreement title and/or ownership of the Content has not been transferred to the Licensee;
 - (c) its use of the Content will be at its own risk;
 - (d) it will create and maintain true and complete records of any use of the Content and permit the Licensor to inspect these records upon receipt of reasonable notice from the Licensor;
 - (e) if the Licensor wishes to provide the Licensee with an update of the Content then the Licensee will facilitate the provision of such update by giving any assistance to the Licensor that the Licensor reasonably requires;

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- (f) the Licensor may pursue any available equitable or other remedy against the Licensee as a result of a breach by the Licensee of any provision of this Agreement.

7.2 JCS acknowledges, agrees, warrants and represents that:

- (a) it has legal capacity, power and authority to enter into this Agreement;
- (b) to the best of its knowledge and belief the Content does not infringe the intellectual property rights of any third party and there are no actual or threatened proceedings for any intellectual property infringements in relation to the Content;
- (c) it has made reasonable efforts to correct errors, viruses and bugs that it has identified in the supply of Content.

7.3 Other than as set out in this Agreement, JCS makes no warranties or representations in relation to the Content.

8. Ownership of Intellectual Property

8.1 The Licensee agrees and acknowledges that this Agreement does not transfer or assign any Intellectual Property Rights to it.

8.2 As between JCS and the Licensee, JCS owns all Intellectual Property Rights in the Content.

8.3 The Licensee has no rights in the Content or in any modification or enhancement thereof, other than the rights granted to it pursuant to the Licence.

8.4 The Licensee must not take any step to invalidate or prejudice JCS's (or JCS's licensors') Intellectual Property Rights in the Content or otherwise. Without limiting the foregoing provisions, the Licensee must not register any security interest or purchase money security interest on the Personal Property Securities Register, or otherwise encumber or charge its rights in respect of the Content or under any licence granted by JCS under this Agreement.

9. Liability

9.1 Neither party is liable to the other party for any indirect, special or consequential loss or damage incurred by the other party, including liability for loss of profits, loss of business opportunity, loss of savings, or loss of data.

9.2 JCS is only liable for direct loss incurred by the Licensee as a direct result of one or more breaches by JCS of its obligations under this Agreement. However, JCS's liability for all such direct loss is capped, in the aggregate, at an amount equivalent to the Fees paid by the Licensee under this Agreement, and which cap is reduced to the extent the Licensee or a Force Majeure Event caused or was responsible for such loss.

9.3 The goods and services supplied under this Agreement may come with implied non-excludable guarantees which are regulated by the Australian Consumer Law. The extent of the implied guarantees depend on whether the Licensee is a 'consumer' of goods or services within the meaning of that term pursuant to the Australian Consumer Law as amended. Where the Licensee is a 'consumer' for the purposes of the Australian Consumer Law, JCS is required to provide (and shall hereby be deemed to have provided) the following mandatory statement to the Licensee: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

9.4 If the goods or services supplied by JCS to the Licensee are supplied to the Licensee as a 'consumer' of goods or services within the meaning of that term in the Australian Consumer Law as amended the Licensee will have the benefit of certain non-excludable rights and remedies in respect of the goods

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or services and nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, guarantee, right or remedy which pursuant to the Competition and Consumer Act 2010 (Cth) is so conferred. However, if the goods or services are subject to a non-excludable condition, warranty, guarantee, right or remedy implied by the Australian Consumer Law and the goods or services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to s 64A of the Australian Consumer Law, JCS limits its liability for breach of any such non-excludable warranty, guarantee, right or remedy implied by the Australian Consumer Law (except in respect of a guarantee implied by sections 51, 52 or 53 of the Australian Consumer Law) or expressly given by JCS to the Licensee, in respect of each of the goods and services, where it is fair and reasonable to do so, at the option of JCS, to one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

- 9.5 In order for the Licensee to claim against JCS under a non-excludable warranty, guarantee, right or remedy provided by the Australian Consumer Law, or under an express warranty given in respect of the goods or services provided under this Agreement, the Licensee must provide written notice to JCS with documentary evidence substantiating the claim, for JCS's review, and, in respect of the Content, must continue to use it only in accordance with the provisions of this Agreement.
- 9.6 Upon receipt of a valid claim from the Licensee under an implied warranty, guarantee, right or remedy provided by the Australian Consumer Law, JCS will contact the Licensee to arrange a suitable remedy. The Licensee may claim reasonable expenses incurred in making a valid claim under such a warranty, guarantee, right or remedy by providing documentary evidence of the expenses to JCS. The Licensee will be responsible for any expenses incurred in relation to an invalid claim.
- 9.7 Where JCS elects to repair goods, the Licensee agrees that the goods may be replaced by refurbished goods of the same type rather than being repaired and refurbished parts may be used to repair goods. The Licensee acknowledges that where the goods are repaired and are capable of retaining user-generated data, it is possible that the repair of the goods may result in loss of data.
- 9.8 Any warranty against defects provided by JCS to the Licensee as a 'consumer' under the Australian Consumer Law is in addition to other rights and remedies of the Licensee under a law in relation to the goods or services to which the warranty relates.
- 9.9 Where the Licensee is not a 'consumer' for the purposes of the Australian Consumer Law, all conditions, warranties and guarantees implied in this Agreement are excluded, to the extent possible by law.

10. Indemnity from Licensee

- 10.1 The Licensee indemnifies JCS in respect of all and any loss and damage incurred by JCS as a result of any breach by the Licensee of its obligations under this Agreement.

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11. Confidentiality

- 11.1 Each party agrees and acknowledges that it may receive Confidential Information of the other party during the Term of this Agreement.
- 11.2 Each party (the first party) agrees and acknowledges that the Confidential Information of the other party will be received and held by the first party in strict confidence and will not be disclosed by the first party, except:
- (a) with the prior written consent of the other party;
 - (b) where disclosed to the employees or professional advisors of the first party on a confidential basis;
 - (c) as required by the rules of any stock exchange; or
 - (d) as required by a court of competent jurisdiction, and then, only to the extent required, and provided that the first party must promptly notify the other party of such requirement of disclosure and provide full particulars to the other party of the disclosure.
- 11.3 Confidential Information does not include any information:
- (a) that is independently developed, obtained or known by a party, without any obligation of confidence to the other party; or
 - (b) that is in the public domain, except where due to a breach of this Agreement or any breach of any obligation of confidence.

12. Termination

- 12.1 Either Party may terminate this Agreement at any time by giving at least 20 Business Days' notice in writing to the other Party.
- 12.2 Either party may terminate this Agreement if the other party (the "Defaulting Party") is in material breach of this Agreement and the breach is not capable of remedy, or where the breach is capable of remedy and the Defaulting Party fails to remedy the breach within thirty (30) days of notice.
- 12.3 Either party may terminate this Agreement by notice to the other party if the other party suffers an Insolvency Event.
- 12.4 If this Agreement is terminated:
- (a) JCS must, at the option of the Licensee, destroy or return all Confidential Information of the Licensee to the Licensee;
 - (b) the Licence granted by JCS under this Agreement will immediately and automatically terminate and the Licensee must, at the option of JCS, promptly destroy or return all Confidential Information of JCS to JCS, and must immediately cease using the Content.
- 12.5 Termination does not affect any accrued rights of either party.

13. GST

13.1 Taxable supply

If GST is payable by the Licensor on any supply made under this Agreement the Licensee must pay to the Licensor an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration for the supply is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement. On receiving that amount from the Licensee, the Licensor must provide the Licensee with a tax invoice for the supply.

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13.2 Adjustment events

If an adjustment event arises in respect of any supply made by the Licensor under this Agreement, a corresponding adjustment must be made between the Licensor and the Licensee in respect of any amount paid to the Licensor by the Licensee under this Agreement and any payments to give effect to the adjustment must be made.

13.3 Payments

If the Licensee is required under this Agreement to pay for or reimburse an expense or outgoing of the Licensor or is required to make a payment under an indemnity in respect of an expense or outgoing of the Licensor, the amount to be paid by the Licensee is the sum of:

- (a) the amount of the expense or outgoing less any input tax credit in respect of that expense or outgoing that the Licensor is entitled to; and
- (b) if the Licensor's recovery from the Licensor is in respect of a taxable supply, an amount equal to the GST payable by the Licensor in respect of that recovery.

13.4 GST terminology

The terms "adjustment event", "consideration", "GST", "input tax credit", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999*.

14. Notices

14.1 A notice under this Agreement shall be sent by hand delivery, post or email, using the address specified at the top of the first page of this Agreement or the email address for the recipient's representative specified in Part A.

14.2 Any notice issued by hand shall be deemed delivered upon delivery.

14.3 Any notice issued by post shall be deemed delivered 3 Business Days after posting if posted domestically, or 10 Business Days after posting if posted internationally.

14.4 Any notice issued via email shall be deemed to be delivered upon the email being sent, provided that if an email is sent out of Business Hours, it shall be deemed to be delivered at 9am on the next Business Day.

15. Dispute Resolution

15.1 If a dispute arises out of, or in any way in connection with, or otherwise relates to this Agreement, or the breach, termination, validity or subject matter hereof, or as to any related claim at law, in equity or pursuant to any statute, the parties agree to refer their dispute to Mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.

15.2 The Mediation shall be conducted in Sydney and shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into this Deed.

15.3 The costs of the mediator shall be shared equally between the parties.

15.4 Nothing in this clause shall limit either party's right to seek urgent interlocutory relief from any court of competent jurisdiction at any time.

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16. General

- 16.1 Amendment: JCS may amend these terms and conditions from time to time. JCS will endeavour to provide written notice, and the current terms will be displayed at www.jcs.com.au/terms-and-conditions.
- 16.2 Assignment: If there is a change of control of our business or a sale or transfer of business assets, we reserve the right to transfer to the extent permissible at law, this Agreement and all of JCS' rights and obligations under this Agreement. The Licensee may not assign, transfer, licence or novate its rights or obligations under this Agreement without the prior written consent of JCS.
- 16.3 Severability: If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain enforceable.
- 16.4 Relationship: The parties are independent contractors and this Agreement does not create any relationship of partnership, joint venture, or employer and employee or otherwise.
- 16.5 Australian Consumer Law: The exclusions and limitations of liability set out in this Agreement shall apply to the fullest extent permissible at law, but the parties do not exclude or limit liability which may not be excluded or limited by law. Without limiting the foregoing provisions, JCS does not exclude liability under the Australian Consumer Law which is prohibited from being excluded. The parties acknowledge and agree that the limitations and exclusions of liability contained in this Agreement constitute an allocation of risks that form part of the negotiated commercial terms of this Agreement.
- 16.6 Counterparts: This Agreement may be executed in counterparts provided that no binding agreement shall be reached until the executed counterparts are exchanged. A counterpart of a document exchanged by email shall constitute evidence of the execution of the original.
- 16.7 Entire Agreement: This Agreement constitutes the entire agreement between the parties and to the extent possible by law, supersedes all prior understandings, representations, arrangements and agreements between the parties regarding its subject matter.
- 16.8 Jurisdiction: This Agreement will be interpreted in accordance with the laws in force in New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts situated in New South Wales.