

TCG Services Agreement

UNLESS YOU (THE "CUSTOMER") HAVE ENTERED INTO A SEPARATE, DULY SIGNED AGREEMENT WITH TCG OR AN AUTHORIZED DISTRIBUTOR, GOVERNING THE SERVICES REFERENCED IN THE BELOW TERMS AND CONDITIONS OR A WRITTEN STATEMENT OF WORK OR PURCHASING AGREEMENT, THE SERVICES ARE PROVIDED UNDER THE FOLLOWING TERMS AND CONDITIONS AND ANY SUPPLEMENTAL TERMS REFERENCED BELOW AND YOUR RIGHT TO RECEIVE THE SERVICES AND USE THE RESULTS IS CONDITIONED UPON YOUR ACCEPTANCE OF THIS AGREEMENT.

IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS AND YOU DO NOT HAVE A SEPARATE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT RECEIVE THE SERVICES OR USE OR COPY THE RESULTS AND YOU MUST DELETE ANY COPIES OF SUCH FROM YOUR SYSTEMS.

This "Agreement" is between Consul Inc., on behalf of itself and its direct and indirect subsidiaries and other affiliates hereunder ("TCG") and the Customer designated on the Statement of Work or Signature Page ("Customer") and is effective from the beginning of the Service Period.

1. SERVICES.

1.1. Services. Customer may contract to retain TCG to provide Customer with the services set out in the applicable Statement of Work to this Agreement (collectively the "Services").

1.2. Statements of Work. Customer will contract for Services by executing one or more written statements of work (each a "Statement of Work"). A Statement of Work shall identify the Services that Customer requests TCG to provide, the duration of the Services, the fees payable by Customer for the Services, and the payment structure. To be effective, each Statement of Work must reference this Agreement, and be agreed to in writing by an authorized representative of TCG and Customer, and once so agreed upon will be incorporated herein by reference. A Statement of Work may be incorporated within an invoice, which will be considered agreed in writing when full payment has been made by Customer and a confirmation of payment has been issued by TCG.

1.3. Performance of Services. TCG will perform the Services in accordance with the terms and conditions of this Agreement and of each Statement of Work. Services will be performed with reasonable skill and care and in accordance with their description in the Statement of Work. Nothing in this Agreement grants Customer any additional rights to the TCG Licensed Product licensed under the applicable agreement between TCG and Customer.

TCG will deliver the Services within industry-standard timeframes. Dates and deadlines for the provision of Services are for guidance only, may be adjusted, and are not binding on TCG. Adherence to the dates and deadlines is subject to the timely receipt of all required information, instructions and documents to be supplied by Customer and the timely fulfillment of Customer's responsibilities to cooperate in accordance with section 1.4.

1.4. Customer Responsibilities. Customer will make available to TCG any data, information, product samples, access, assistance, information, records, documentation, and any other materials reasonably required by TCG to perform the Services, including, but not limited to, any data, information, pre-existing work, supplementary information, or materials specifically identified in the Statement of Work (collectively, "Customer Material").

Except as stated in the Statement of Work, TCG does not validate the accuracy, consistency, fulfillment, completion, and quality of any Customer Material. The accuracy, truthfulness, legal use, license, ownership, and completeness of information provided to TCG is the sole responsibility of Customer. Services are based solely on the sample information and Customer Material provided by Customer.

Customer warrants that all Customer Material is fit for purpose or will be made fit for purpose in order for TCG to complete the Services at Customer's sole expense. In any case where Customer Material has not been produced correctly or to an adequate quality standard, is not made fit for purpose within an adequate timeframe, or does not exist, the Company will be free from its obligations insofar as they are hindered or affected by Customer Work.

Customer shall ensure that access, assistance, and facilities are made available to TCG when required by TCG, including the assistance of properly qualified, briefed and authorized personnel of Customer.

Customer shall take all necessary steps to eliminate or remedy any obstacles to or interruptions in the performance of the Services. If communication by Customer is interrupted for ninety (90) days for any reason beyond the control of TCG, upon notice to Customer, TCG shall be free from all remaining obligations under the applicable Statement of Work.

TCG Services Agreement

1.5. On Premises. If TCG personnel are working on Customer's premises:

- (a) Customer will provide a safe and secure working environment for such personnel;
- (c) Suitable space for conducting meetings, at no charge; and
- (b) TCG will comply with all reasonable workplace safety and security standards and policies that are applicable to Customer's employees and of which Customer notifies TCG in writing and in advance of the commencement of any Services hereunder.

1.6. Relationship of the Parties. TCG is performing the Services as an independent contractor, not as an employee, agent, joint venturer or partner of Customer. TCG and Customer will always remain independent entities without authority to bind or obligate the other Party. Neither Party will identify themselves as the other, or that they are in the relationship of partners, joint ventures, fiduciaries, or agents in an express or implied way except where that authority has been expressly granted by the other Party.

Customer acknowledges that TCG, either by entering into the Agreement or by providing the Services, neither takes the place of Customer or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Customer to any third party or that of any third party to Customer.

TCG may delegate the performance of all or part of the Services to an agent or a subcontractor and Customer authorizes TCG to disclose all information necessary for such performance to the agent or subcontractor.

TCG acknowledges and agrees that its personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Accordingly, for a period of twelve (12) months following the completion of Services, Customer agrees not to directly or indirectly solicit for employment any TCG employees or contractors, provided that a job posting available to the general public shall not be deemed such a solicitation.

2. PAYMENT.

2.1. Fees and Expenses. In consideration for the Services, Customer will pay TCG fees in accordance with the terms set forth in the applicable Statement of Work. In addition, Customer will reimburse TCG for all reasonable and customary travel, lodging and other related expenses incurred by TCG or its personnel in connection with the performance of Services in accordance with the terms set forth in the Statement of Work and upon being provided with receipts and other documentation for all such expenses.

2.2 Invoicing. TCG will by default send invoices by e-mail as a PDF file from their electronic mailbox, unless expressly agreed otherwise in writing.

2.3 Interest. Invoices are due upon receipt. If Customer does not pay an invoice within fourteen (14) days TCG may charge interest at the lesser of 1.5% per month or the maximum rate set by local Law, this shall apply without a reminder.

2.4. Pricing. TCG reserves the right to increase its fees if Customer's instructions are found to be not in accordance with Customer Material, or other information supplied or used for the purpose of obtaining a fee quotation. Clients will be notified of any increase in fees.

If a fixed price has been agreed and changes to costs of raw material, currency fluctuations, increased labor, transport and/or freight costs, or increased supplier prices occur, TCG shall be entitled to adjust the price by providing Customer sixty (60) days' notice.

2.5. Taxes. All fees and expenses charged by TCG hereunder are net of sales, use, value added or other applicable taxes, tariffs or duties, payment of which will be the sole responsibility of Customer (excluding any taxes based on TCG's net income). Customer will promptly reimburse TCG for any such amounts that TCG pays on Customer's behalf.

3. OWNERSHIP.

3.1. Content. In return for payment of the price, the content and information ("Licensed Product") transmitted are subject to a non-transferable and non-exclusive right of use for a limited period, depending on the Statement of Work.

TCG Services Agreement

3.2. Usage Rights. Except for authorized use of the information within the scope of this Agreement, any exploitation, reproduction, recording, representation, modification, publication, transmission, modification, total or partial of the contents of the Services, as well as the databases appearing if necessary on the TCG sites are strictly prohibited, regardless of the process and medium used.

3.3. Ownership Rights. In any case, TCG remains the owner, including all rights, title and interest, of its tools, methods, processes, documentation, and know-how developed previously or during the Service provided to Customer.

4. CONFIDENTIAL INFORMATION.

Both TCG and Customer acknowledge that each party may from time to time possess Confidential Information of the other party.

4.1. Definition. As used herein, "Confidential Information" means all information (whether oral, observed, or written) that is marked or treated as confidential, restricted, or proprietary by the other party, including but not limited to customer information, pricing information, product information, employee information, information regarding business planning and operations, and administrative, financial, and marketing activities.

4.2. Use and Disclosure Restrictions. Each party will protect Confidential Information of the other party with the same degree of care that it uses in protecting its own confidential information, but not less than reasonable care. Neither party will disclose any Confidential Information to any person except those employees who have a need to know and except as otherwise agreed to in writing by the disclosing party.

Customer acknowledges that unencrypted Internet messages can be lost, changed, or tampered with, with or without the intervention of third parties, that conventional electronic mail are not protected against access by third parties. As a result, TCG is not responsible for keeping electronic mail confidential or intact after it has left TCG's area of responsibility. TCG accepts no liability for data security during transmission via the Internet, nor for data security if the data is in the possession of Customer. This also includes any harm caused by malware during data transmission and any resulting damage to Customer.

The existence of this Agreement and the nature of the business relationship between the parties are not considered Confidential Information. Confidential Information will remain the property of the disclosing party and will only be used for the benefit of the disclosing party.

4.3. Exclusions. Confidential Information does not include information that the receiving party can prove is:

- (i) received from a third party having a bona fide right to such information and not under an obligation of confidentiality;
- (ii) developed independently without reliance on any Confidential Information;
- (iii) publicly known or readily ascertainable through no wrongful act of the receiving party, or
- (iv) required to be disclosed by a court of law, provided the receiving party notifies the disclosing party prior to such disclosure.

Both parties will return all Confidential Information contained in a tangible form upon termination of their relationship, or at an earlier time at the other party's request.

5. WARRANTY.

5.1. Services Warranty. TCG warrants that the Services will be performed in a professional and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of forty (40) days from the completion of the applicable Services (the "Warranty Period"). If during the Warranty Period, TCG receives written notice from Customer of non-conformity with the performance of the Services set forth in this Section 5.1, TCG will, as Customer's sole and exclusive remedy and TCG's entire liability for any breach of the foregoing warranty, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming Services. Except for this warranty, all products and Services are provided "AS IS". THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE SERVICES.

5.2. Warranty Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TCG AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING

TCG Services Agreement

THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, REGULATORY DECISIONS, COMPLIANCE OR CONFORMANCE WITH REGULATIONS, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, AND NONINFRINGEMENT. TCG AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

6. EXPIRATION AND TERMINATION.

6.1. Termination. Each party will have the right to terminate this Agreement or any Statement of Work if the other party breaches any material term of this Agreement or Statement of Work, as the case may be, and if such breach is capable of cure, the breaching party fails to cure such breach within thirty (30) days after receipt of written notice thereof. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of this Agreement under this section terminates all Statements of Work entered into hereunder.

6.2. Effect of Termination. Upon the expiration or termination of this Agreement or of any Statement of Work:

- (i) each party will promptly return to the other party all Confidential Information of the other party in its possession or control; and
- (ii) Customer will, within thirty (30) days after receipt of TCG's invoice, pay all accrued and unpaid fees and expenses.

6.3. Survival. The rights and obligations of the parties contained in Sections 2, 3, 4, 5.2, 6.2, 6.3, 7 and 8 will survive the expiration or termination of this Agreement or any Statement of Work.

7. INDEMNIFICATION.

7.1 Indemnification. Customer agrees to indemnify, defend, save, and hold TCG, its affiliates, directors, partners, employees, and agents, harmless from and against any and all third-party claims and expenses (including attorneys fees) (collectively, "Losses") arising out of the performance, non-performance, or alleged breach of this Agreement by Customer, including, without limitation, any act of its agents, or representatives, any defects in the good(s) and/or services provided by TCG, any misappropriation or infringement of any copyright, patent, trademark, trade secret, or other proprietary right of TCG or any third party and any willful misconduct or negligence on the part of Customer. TCG is not obligated to financially compensate Customer for any reason.

7.2. Sole Remedy. THE PROVISIONS OF THIS SECTION 7 SET FORTH TCG'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO SERVICES INDEMNITY RIGHTS OF ANY KIND. EXCEPT AS SET FORTH ABOVE, TCG AND ITS SUPPLIERS DISCLAIM ALL IMPLIED OBLIGATIONS WITH RESPECT TO SERVICES INDEMNIFICATION.

8. LIMITATION OF LIABILITY

8.1. Exclusion of Damages. IN NO EVENT WILL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS) OR FOR COSTS OF PROCURING SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES OR ANY WORK PRODUCT PROVIDED HEREUNDER, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer may have other rights under applicable mandatory local laws. This Agreement does not change Customer's rights under applicable mandatory local laws if such laws do not permit it to do so.

8.2. Cap on Liability. IN NO EVENT WILL TCG OR ITS SUPPLIERS' AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED TWENTY-FIVE PERCENT (25%) OF THE AMOUNTS ACTUALLY PAID TO TCG BY CUSTOMER UNDER THE STATEMENT OF WORK GIVING RISE TO ANY LIABILITY HEREUNDER. The limitations of liability in this section are a fundamental part of this agreement and enable TCG to provide products and services to Customer at lower prices. These limitations of liability are intended to apply even if an exclusive remedy is found to have failed of its essential purpose.

9. GENERAL PROVISIONS.

TCG Services Agreement

9.1. Assignment. Customer shall not assign this Agreement, in whole or in part, by operation of law or otherwise. Any attempt to assign this Agreement without prior written consent will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

9.2. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the province of Ontario, Canada excluding that body of laws known as conflicts of law. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.

9.3. Mandatory Arbitration. Any disagreement, dispute, controversy or claim with respect to the validity of this Agreement or arising out of or in relation to this Agreement or any agreement in which either is incorporated, or breach hereof, shall be finally settled by arbitration in Ontario, Canada or other location agreed upon by TCG, in accordance with articles of the American Arbitration Association ("AAA") for Commercial Arbitration, or such other commercial arbitration process as may be mutually agreed upon by the Parties. The dispute will be determined in the English language, and by one arbitrator. Each Party shall bear its own attorney's fees, costs and expenses, and an equal share of the arbitrators' and administrative fees of arbitration.

9.4. Notices. All notices required or permitted under this Agreement will be in writing. Notices will be effective upon delivery if delivered in person and upon mailing if delivered by courier service, overnight delivery services or by a form of certified or express mail. Notices affecting this Agreement, as a whole will be sent to the address set forth above, if any, or to such other address of a party as such party may identify in writing; notices related to a particular transaction will be sent to the primary corporate address set forth in the Statement of Work or to such other address as Customer or TCG may identify the other party in writing.

9.5. Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, natural disasters or governmental action. In the event of such delay, the date of delivery or time for completion will be extended by a period of time reasonably necessary by both TCG and Customer. If the delay remains in effect for a period in excess of 30 days, TCG may terminate this Agreement effective upon written notice to Customer according to 6.2.

9.6. Entire Agreement; Modification; Interpretation. This Agreement, including all accepted Statements of Work referencing this Agreement constitutes the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Customer agrees that additional or different terms on Customer's purchase order shall not apply. Failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of this Agreement will be effective only if in writing and signed by Customer and an authorized representative of TCG.

If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The word "including" when used in this Agreement will be including without limitation of the generality of any description, definition, term or phrase preceding that word.

9.7. Counterparts and Execution. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. An originally executed version of this Agreement or any Exhibit, attachment and subsequent Statement of Work, that is delivered by one party to the other party, as evidence of signature, by facsimile, or by electronic mail after having been scanned as an image file (including, Adobe PDF, TIF, etc.) or electronically signed shall, for all purposes hereof, be deemed an original signature and neither party shall have the right to object to the manner in which the Agreement was executed as a defense to the enforcement of the Agreement.

END OF TERMS