

AUSTRALIAN COLLECTIONS GROUP PTY LTD

(ABN 96 667 633 436)

SERVICES AGREEMENT

1. Definitions

In this Agreement:

Agreement means these Terms and Conditions, and any annexures, schedules or attachments entered between You and Us. For the avoidance of doubt, each time We provide Our Services to You, a separate Agreement is formed incorporating these Terms and Conditions.

Commission Fees means the commission and/or fees payable by You for Services as agreed between Us and You in accordance with these Terms and Conditions, and as set out in any Invoice issued to You.

Confidential Information means any information or data, whether or not in a material form, which is confidential to either of us, including confidential information acquired, collected or developed for the purpose of the Services or obtained under this Agreement, whether disclosed before or after the date we commence providing Goods and Services to you, except that information which is already in the public domain otherwise than as a result of a breach of this Agreement.

Consequential Loss means any one or more of the following: loss of bargain; loss of revenues; loss of reputation; indirect loss; loss of profits; consequential loss; loss of actual or anticipated savings; lost opportunities, including opportunities to enter into arrangements with third parties; and loss or damage in connection with claims against You by third parties.

Credit means your deferred debt to Us for the purchase of Goods and Services.

Delivery means in the case of Services, the date of completion of those Services.

Due Date means the date set out in any Invoice issued by Us to You.

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

Intellectual Property means any intellectual property, including (without limitation):

- (a) any patent, trademark or service mark, copyright, registered design, unregistered design, trade secret or Confidential Information; or
- (b) any licence or other Right to use or to grant the use of any of the above or to be the registered proprietor or user of any of them;

Obligation means any express or implied legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

Right includes any legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

Services means the debt collection services to be performed by Us as specified in this Agreement or as otherwise agreed between You and Us.

Scope of Services means the scope of the Services to be supplied by Us and the scope of work to be undertaken by Us for You as agreed in writing by Us.

Specifications means any written specification relating to Goods that details the quantities, processes and/or conditions required for the correct use of the Goods.

Schedule 1 means the table annexed to this Agreement and titled "Schedule 1".

We and **Us** and words with a similar connotation means Australian Collections Group Pty Ltd (ABN 96 667 633 436) and includes our personnel, agents, employees and suppliers or service providers that are engaged by Us.

Website means www.australiancollections.com.au.

You means the purchaser of Services from Us as specified herein and reflected in any invoice, or other documents.

2. Terms of Sale

- 2.1. This Agreement governs the sale and provision of all Services to You. All other agreements or terms, express or implied are excluded to the fullest extent permitted by law including without limitation any of your terms and conditions.
- 2.2. You are taken to have exclusively accepted and are immediately bound, jointly and severally, by these Terms and Conditions if you enter into this Agreement for Services for or accepts completion of our Services.
- 2.3. This Agreement can only be amended in writing and signed by both parties. This Agreement will prevail to the extent of any inconsistency between any communication in writing and this Agreement.
- 2.4. Services to be supplied by Us to You are as described in this Agreement and the description of the Services in this Agreement as accepted (modified only as may be agreed in writing by Us) will prevail over all other descriptions including any prior enquiry by You.
- 2.5. We reserve the right to update from time to time the Terms and Conditions set out in this Agreement. If We make a change to these Terms and Conditions, that change will take effect from the date on which We provide reasonable notification to the You of such change. You confirm that notification on our website of the updated Terms and Conditions or reference to the updated Terms and Conditions in any material provided to You will be reasonable steps taken by Us to inform You. You will be taken to have acknowledged and accepted such change if You make a subsequent request for Us to provide Services to You. We declare and You acknowledge that the most up-to-date version of the Terms and Conditions which form part of the Agreement can be found on our website currently located at www.australiancollections.com.au.

3. Term

- 3.1. This Agreement will commence on the Date of Agreement and unless agreed by Us to be ongoing, will terminate on the Expiry Date as set out in Schedule 1.
- 3.2. If either party wants to vary or extend the term of this Agreement for a further term, that party must request such extension of the term in writing to the other party on or before the date that is fourteen (14) days day before the Expiry Date.
- 3.3. The other party must, within fourteen (14) days of receiving a request for extension, advise the other party in writing whether they agree to extend the term for the further term.

4. Request for Services

- 4.1. You must submit a request for Services in writing for each individual debt collection service required by You unless otherwise agreed in writing by Us.
- 4.2. We, in our absolute and sole discretion, are entitled to reject or refuse any request for Services (without any reason) by giving written notice to you within fourteen (14) days of receiving a request for Services.
- 4.3. Upon receipt of a request of Services from You, a copy of this Agreement will be issued to You which will be valid for the period of thirty (30) days, unless earlier withdrawn.
- 4.4. Additional fees will apply to any variations in the request for Services or for the reasons set out in clause 10.2.

5. Credit Application

- 5.1. Should We become a creditor of You, You authorise Us to collect, retain, use, record, and disclose credit information about You for

the purpose of assessing and reporting matters related to your credit-worthiness.

- 5.2. If You breach any payments terms, We may, at our discretion, terminate the Agreement and report the breach to any credit provider or credit reference organisation. You understand that this may affect your credit rating.

6. Commencement of Services

- 6.1. We will commence our Services on the date of this Agreement as set out in Schedule 1, or such other date advised by Us in writing.

7. Standards of Service

- 7.1. We agree to perform the Services:
- (a) in a diligent manner and with all necessary skill and care expected in accordance with the provisions of such Services;
 - (b) in accordance with any time limits specified in this Agreement;
 - (c) in accordance with all applicable legislation, acts, ordinances, rules, regulations and by-laws; and
 - (d) in accordance with the written instructions You provide to Us (if any).

8. Exclusivity

- 8.1. If in Schedule 1, this Agreement is noted as "Exclusive", during the term of this Agreement, you must not engage the Services (similar to the Services provided by Us) of any third party other than Us, without our prior written consent.
- 8.2. If in Schedule 1, this Agreement is noted as "Non-exclusive", clause 8.1 is deleted and does not apply.

9. Confidentiality and Intellectual Property

- 9.1. You must keep strictly confidential all financial, technological, strategic and other business information of Ours which has been divulged to or become known by You in the course of your dealings with Us and which is not generally known outside Us and your respective organisations.
- 9.2. You must only use such Confidential Information for the purpose for which it was disclosed, and only disclose the confidential information to those in its organisation who need to know in connection with the purpose for which it was disclosed. No disclosure may be made to anyone else without our prior written consent (with the exception of disclosure required by law, in which case prior notice of the disclosure must be given to Us).
- 9.3. If required by law, We will keep copies of any materials that We produce for You and that may contain Confidential Information.
- 9.4. We retain ownership in all Intellectual Property created by Us in providing the Services. Provided that You pay all amounts due to Us under the Agreement, We grant You an irrevocable and royalty-free non-exclusive license to the extent only to use such relevant Intellectual Property for the purpose of obtaining the benefit of the Goods and Services only (but not to further exploit the Intellectual Property).

10. Commission Fees

- 10.1. We are entitled to charge Commission Fees for any Services requested by You and completed by Us. A Pricing Schedule including all fees and commissions charged by Us is set out in Schedule 1 and as otherwise attached to this Agreement.
- 10.2. We acknowledge that where Services are performed by Us, which may result in no collection of debt moneys owed to You, we will not be entitled to charge Commission Fees for such Services. In the event You agree to any third party charges, You will remain liable to make payment in respect of such third party charges. You acknowledge that if after We commence performance of any Services for You and the debt is then collected by You that we will be entitled to Commission fees for the Services performed by Us.

- 10.3. You acknowledge that the Commission Fees may increase and you agree that you must pay for such increases as a result of the following:

- (a) all Goods and Services tax payable not otherwise included in all or any of the Commission Fees. We will issue an Invoice to you for Goods and Services tax;
- (b) repeated or varied Services due to Your act or omission;
- (c) a request to vary the Scope of Services by you;
- (d) a variation in the cost of any third party charges required by Us in the performance of Services, by the supplier or third party agent;
- (e) interest accruing daily on the unpaid balance of any Commission Fees or any amount payable, calculated daily from its due date until the date of payment by You at the Interest Rate set out in Schedule 1;
- (f) in relation to credit accounts, interest accruing daily the unpaid balance of Commission Fees due and owing by You from the Due Date until the date upon which payment is received;
- (g) any additional costs or expenses incurred by Us because you have given Us incorrect information.

11. Additional Fees and Charges

- 11.1. We reserve the right to charge any additional fees and/or charges which may arise during the completion of Services on Your behalf. Such fees and/or charges may only be charged by Us if they are first disclosed to You in writing.

11.2. Legal fees

We may recover from You all our costs and expenses including any legal costs and expenses in connection with and incidental to:

- (a) Any default by You in observing or performing any of Your covenants in this Agreement; and
- (b) The contemplated, attempted or actual enforcement, preservation or exercise of any right under this Agreement.

11.3. Recall fees

If You notify us of your intention to withdraw any request for Services prior to providing a reasonable opportunity for us to perform the requested Services, you will be liable to pay for a recall fee of \$25.00 plus GST per file, or as otherwise agreed between the parties in writing.

11.4. Administration fees

We reserve the right to charge an additional 20% premium on all third-party fees, charges or disbursements, where You have agreed or provide instructions agreeing to proceed with engaging such third-party for the completion of the Services by Us.

12. Payment

- 12.1. You agree and authorise to make payment of the Commission Fees:
- (a) By way of deduction from any debt money collected on Your behalf pursuant to Services completed for You, upon receipt of written authorisation from You; or
 - (b) If agreed by Us in writing, then within seven (7) days of the date of a valid Invoice from Us to you for Services completed by Us
- 12.2. We may invoice You on a weekly, fortnightly, or monthly basis, as agreed by the parties in writing, for the completed Services undertaken by Us for an individual services or several services.
- 12.3. The time of payment is an essential term of this Agreement. You indemnify Us on demand against all costs, fees, expenses and legal costs (on an indemnity basis) incurred by Us in recovering any outstanding unpaid amount or Fees from you.
- 12.4. Unless otherwise indicated, monetary references are to Australian dollars.

- 12.5. We accept payment of all or any money owing under this Agreement by you, in the form of electronic funds transfer (EFT) or BPAY. If you pay via credit card, You acknowledge that You may be liable for a surcharge.
- 12.6. If We have agreed to provide credit to You, then payment must be made by cleared funds on the Due Date.

13. Security and Charge

- 13.1. In consideration of Us agreeing to supply the Services, your charges (and grants a Security Interest over) all of its Rights, title and interest (whether joint or several) in any land, realty or other assets owned by You either now or in the future and capable of being charged, to secure the performance by You of your Obligations under an Agreement (including, without limitation, the payment of all moneys owed by You to Us from time to time).

14. Cancellation/Recall

- 14.1. You are not entitled to cancel your request for Services if you have signed this Agreement, and/or the Services have not yet been performed by Us.
- 14.2. If you cancel your request for Services, you must pay Us the Recall Fee in accordance with clause 11.3.
- 14.3. We may cancel an Agreement between us or any performance of Services at any time before completion of the Services occurs by giving written notice to You. On giving such notice, We will repay to You any money paid by You for any Services not yet performed or completed. We will not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.4. Cancellation of Services will not be accepted once part or the whole of the Services has commenced and/or is completed.

15. Delay

- 15.1. If either of Us is delayed or prevented from performing any obligations under this Agreement due to any cause or circumstance that is outside of our (respective) control, We agree to delay the performance of the affected obligations until the cause or circumstance is abated or until such time as mutually agreed between Us in writing.

16. Termination

- 16.1. We reserve the right to terminate this Agreement or suspend our performance of the whole or any outstanding part of the request for Services without liability to You in all or any of the following circumstances:
- (a) where you breach this Agreement;
 - (b) where you enter into bankruptcy, liquidation or a composition with your creditors, have a receiver or manager appointed over all or any part of your assets, enter into administration or become insolvent;
 - (c) where we notify you of having reasonable grounds for suspecting that an event in clause 16.1(b) has occurred or will occur, or you will not pay for Services on the due date;
 - (d) if you do not provide us with a safe working environment.
- 16.2. You have the right to terminate this Agreement or suspend our performance of the whole or any outstanding part of the request for an Individual Service or supply of Goods in all or any of the following circumstances:
- (a) where we enter into bankruptcy, liquidation or a composition with your creditors, have a receiver or manager appointed over all or any part of your assets, enter into administration or become insolvent;
 - (b) where you notify us of having reasonable grounds for suspecting that an event in clause 16.2(a) has occurred or will occur.
- 16.3. In the event this Agreement is terminated by either party, and any debts collected during the performance and/or completion of the Services for You remain uncollected as at the date of termination, You may collect such debts at any given time, on the condition that

We may first deduct any Fees owing to us as at the date of termination. If We elect to deduct our Fees, We will obtain your written approval first, prior to deducting any Fees.

- 16.4. This Agreement may be terminated by Us or you in accordance with circumstances provided by the general law and this clause 16 does not prevent the parties from agreeing to additional circumstances in which this Agreement may be terminated.
- 16.5. Termination by Us in accordance with this Agreement is without prejudice to our other remedies and our right to recover payment from you for any Services provided by Us up to and including the date of termination.

17. Our Warranties

- 17.1. We do not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010 (Cth)*) where to do so would contravene that statute or cause any part of this Agreement to be void.
- 17.2. We represent and warrant to you that:
- (a) We will provide the Services in accordance with standards of skill, care, and diligence normally practised by suitably qualified and experienced persons providing Services of a similar nature to the Services provided by Us;
 - (b) We have the power and capacity to enter and perform the Services and our obligations under this Agreement; and
 - (c) We have sufficient skill, expertise, capacity and resources to perform the Services.
- 17.3. Any performance standards, figures or representations as to quality given by Us are estimates based on our past experience only. We make no representation and are under no liability for damages for failure of any of the Services offered to attain such quality standards, figures or quality unless specifically represented and warranted in writing. Any such warranties are subject to recognised tolerances applicable to such standards, figures or quality.

18. Defects

- 18.1. Subject to any statutory provisions to the contrary and any clause herein, if after completion of our Services and/or Services for are defective in any way, as a result of an act or omission by Us or our negligence, you must give Us written notice together with a reasonable description as to why the Services are defective, within fourteen (14) days of completion of the Services. Upon such notification You must:
- (a) provide all supporting evidence; and
 - (b) allow Us the opportunity to determine whether the Services are in fact defective.
- 18.2. Upon receipt of a notice in accordance with clause 18.1 subject to Us being satisfied (acting reasonably) that the Services are defective as a result of an act or omission by Us or our negligence, We may in our absolute discretion elect to either:
- (a) re-supply the defective Services; or
 - (b) provide you with a refund in respect of the defective Services.

19. Your agreements and Indemnity

- 19.1. You agree that by requesting Services from Us, you have first read and understood this Agreement and are satisfied with the Scope of Services outlined in Schedule 1 and that the Scope of Services meets your needs and requirements.
- 19.2. You acknowledge and agree that you have fully disclosed all relevant information to Us so that We may provide the Services to You.
- 19.3. You agree that you will provide Us with a safe work environment, if applicable to the Services.
- 19.4. You acknowledge and agree to comply with all laws, acts ordinances, rules, regulations and by-laws.

- 19.5. You indemnify Us against any claims, loss and/or damages that arise from your failure to comply with this clause 19. Your liability to us under this clause is reduced to the extent of any contribution by Us to the claim, loss or damage.

20. Limitation of Liability

- 20.1. To the extent permitted by law, We are not liable in any way to you for any form of loss, damage or injury sustained or incurred by you or any third party in consequence of, or resulting directly or indirectly out of the provision of Services, or any breach by Us of any contract incorporating this Agreement or this Agreement.
- 20.2. Should any law render any of this Agreement void or ineffective, you agree that our liability is limited, at our sole discretion and option to:
- the resupply of an individual Service; or
 - the total Fees paid by You to Us for the resupply of the Services for an individual Service.
- 20.3. To the extent permitted by law, We are not liable for failure to provide the Services for any reason whatsoever outside our reasonable control including, including but not limited to industrial action, riots or war, governmental action or regulation, act of God. Any such failure does not affect your obligation to pay for all or any Services previously supplied by Us to you.
- 20.4. Our liability to you under this clause 20 (if any) will be reduced proportionately to the extent that any unlawful, negligent or other act or omission by you contributed to the relevant liability, loss, damage, or expense.
- 20.5. You release and indemnify Us against all or any claims, loss and/or damages that you incur or that arise where We are not liable under this clause 20. Your liability to Us under this clause (if any) is reduced to the extent of any contribution by Us to the claim, loss or damage.

21. Dispute Resolution

- 21.1. If a dispute arises out of, or relates to the Services or this Agreement, neither of us may commence any court proceedings relating to the dispute unless We have first complied with this clause 21, except where either of Us seeks urgent interlocutory relief.
- 21.2. If You claim that a dispute ("**Dispute**") has arisen in relation to the Services or under this Agreement, You, as the claiming party, must

give written notice to Us specifying the nature of the Dispute within fourteen (14) days.

- 21.3. On receipt of that notice, We must endeavour to resolve the Dispute expeditiously, by providing a written reply to you within seven (7) days.
- 21.4. If We cannot resolve the Dispute, We reserve the right to conduct an informal mediation to resolve the matter, which You must participate in.
- 21.5. Subject to clause 21.4, if We are unable to resolve the Dispute, then We must mediate the Dispute in accordance with the Mediation Rules in New South Wales, and the nominee of the President of the Law Society of New South Wales will select the mediator and determine the mediator's compensation.

22. General

- 22.1. *Governing Law:* This Agreement is governed by the laws of the State of New South Wales and we both submit to the jurisdiction of the courts of that state.
- 22.2. *Severability:* If any provision of this Agreement is held to be invalid in any way or unenforceable, the remaining provisions shall not in any way be affected or impaired, and this Agreement must be construed to give effect to our original intent.
- 22.3. *Waiver:* Waiver of any provision of or right under this Agreement:
- must be in writing signed by whichever of Us is entitled to the benefit of that provision or right; and
 - is effective only to the extent set out in any written waiver.
- 22.4. *Entire Agreement:* This Agreement and any attachments issued to You by Us constitute the entire agreement between Us with respect to its subject matter and supersede all prior agreements and understandings between Us in connection with this Agreement and/or in connection with the Services.
- 22.5. *Notices:* Notices under this Agreement must be in writing, in English and delivered to the address for the relevant party as set out in Schedule 1 or as otherwise advised to that party by the other party. A notice is taken to be received if hand delivered, on Delivery; if sent by prepaid post, on the second business day after the date of posting; if sent by email at the time that would be the time of receipt under the *Electronic Transactions Act 1999*.
- 22.6. *Survival:* The following Agreement survive expiry or termination of this Agreement: clause 9 (confidentiality and Intellectual Property); clause 20 (limitation of liability); clause 21 (dispute resolution); clause 22.1 (governing law); and this clause 22.6.22.6 (survival).