

Supporter Terms and Conditions

1 Nature of the relationship

- 1.1 Where the individual accepting the Supporter Terms through the Online Portal did so on as an employee or officer of, or otherwise on behalf of, a body corporate or other legal entity, the individual so accepting the Supporter Terms represents and warrants to FBC that he or she is authorised to act on behalf of and to legally bind the Supporter, including to agree to the terms of the Agreement for and on behalf of the Supporter.
- 1.2 The Supporter acknowledges that its support of FBC is non-exclusive and that FBC may seek contributions or other support from, or offer membership to, any other company, business or individual (including without limitation any competitors of the Supporter).
- 1.3 The Supporter must ensure that it and its employees, directors, agents and contractors do not engage in any conduct that will, or is likely to, harm FBC's name, reputation or services or may bring FBC into disrepute, scandal or ridicule.

2 Term

- 2.1 This Agreement commences on the date that the Supporter accepts and agrees to the Supporter Terms (**Commencement Date**) and continues until terminated in accordance with clause 11 (**Term**).

3 Consideration

- 3.1 This Agreement is entered into in consideration of the parties incurring obligations and giving rights under this Agreement and for other valuable consideration.

4 Membership

- 4.1 If the Supporter applies for a non-voting membership (howsoever described) in FBC, then subject to the terms of the Corporate Documents FBC will use its reasonable endeavours to cause its members to accept the Supporter's application for membership in FBC.
- 4.2 The Supporter acknowledges that FBC will not be obliged to offer a full voting membership to the Supporter during the Term, although the Supporter may apply for a voting membership in accordance with the procedure set out by FBC from time to time.

5 Goods and services tax

- 5.1 In this clause 5, **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations and words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings have the same meaning, unless the context otherwise requires.
- 5.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 5.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered by the supplier to the recipient of the taxable supply.

- 5.4 To the extent that consideration for a supply under this Agreement includes non-monetary consideration, the parties agree to act in good faith to agree on the GST exclusive market value of the non-monetary consideration provided for the supply. In such circumstances, the parties agree to exchange tax invoices for their respective supplies and to set off any amounts payable on account of GST so that only the net amount of GST is payable to the appropriate party.

- 5.5 To the extent that 1 party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

6 Warranties, liabilities and indemnities

- 6.1 The Supporter warrants that:

- (1) it has full legal capacity and power to enter into this agreement;
- (2) it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and to carry out the transactions and grant the rights contemplated under this Agreement;
- (3) its entry into this Agreement does not breach any existing agreement or arrangement with any other person or infringe the rights, including the Intellectual Property rights, of a third party; and
- (4) it will comply with all applicable laws, codes of conduct and industry standards when exercising its rights or complying with its obligations under this Agreement.

- 6.2 FBC warrants to the Supporter that it owns, or is entitled to use and licence to the Supporter, the FBC Mark and FBC Logo.

- 6.3 To the maximum extent permitted by law, a party's aggregate liability to the other party for any Loss in connection with this Agreement is limited to the amount of \$100. This limitation of liability will not apply in relation to any liability that cannot be limited or excluded by law or any indemnity given under this Agreement.

- 6.4 The Supporter indemnifies FBC and its officers, employees, agents, contractors and volunteers (**Indemnified Parties**) against any **Loss** incurred or suffered by any of the Indemnified Parties arising from or in connection with:

- (1) any negligent act or omission of Supporter or its officers, employees, contractors or agents; or
- (2) any injury to, or death of, a natural person and any loss of or damage to, the real or personal property of FBC or a third party that is caused or contributed to by Supporter or its officers, employees, contractors or agents,

except to the extent that any Loss is caused by a breach of this Agreement by FBC or the negligent act or omission of any Indemnified Party.

- 6.5 The Supporter agrees that the indemnity given in clause 6.4 is held by FBC on behalf of, and on trust for, each of the Indemnified Parties and can be enforced by FBC for the benefit of each of the Indemnified Parties in the name of FBC or in the name of any of the Indemnified Parties.

7 Intellectual Property

- 7.1 This Agreement does not effect any change in ownership of any Intellectual Property rights owned or licensed by a party.
- 7.2 FBC grants to the Supporter a non-exclusive, non-transferable, revocable, royalty-free, non-sublicensable licence for the Term to use the FBC Mark and to use and

reproduce the FBC Logo, but only in connection with the promotion of the Supporter's relationship with FBC.

7.3 Subject to FBC complying with clause 7.4 (if applicable), the Supporter grants to FBC a non-exclusive, non-transferable, revocable, royalty-free, non-sublicensable licence for the Term to use and reproduce the name, logo and other Intellectual Property of the Supporter in connection with the promotion of Supporter 's support of FBC.

7.4 In exercising the rights granted to it under clause 7.3, FBC must comply with the Supporter Brand Guidelines, if any, that the Supporter may require to be followed in relation to the use of its Intellectual Property. The Supporter may, by notice in writing to FBC, update, vary, amend or replace the Supporter Brand Guidelines.

8 Confidentiality

8.1 Each party must treat as confidential information the provisions of this Agreement and all information provided by the other party under this Agreement (**Confidential Information**).

8.2 A party must not use the other party's Confidential Information for any purpose other than satisfying obligations and exercising rights in connection with this Agreement.

8.3 A party must not disclose the other party's Confidential Information to any person except:

- (1) to its employees, contractors, professional advisors and auditors (and those of its Related Bodies Corporate) on a 'need to know' basis provided those persons first agree to observe the confidentiality of the information; or
- (2) with the other party's prior written consent.

8.4 This clause 8 does not apply to any information which is generally available to the public (other than as a result of the wrongful disclosure by a party) or is required to be disclosed by any law.

9 Privacy

9.1 Each party must comply with its obligations under the Privacy Act in respect of any Personal Information disclosed to it.

9.2 Each party must not transfer Personal Information outside of Australia or allow persons outside of Australia to have access to that Personal Information, except to the extent agreed between the parties and must otherwise take reasonable steps to ensure that Personal Information is protected against misuse, loss and unauthorised access.

10 Dispute resolution

10.1 Any dispute, difference or disagreement under this Agreement (**Dispute**) must be handled under this clause. However, nothing in this clause prevents a party seeking urgent interim or interlocutory relief from a court of law to preserve property or prevent irreparable harm. Further, if a party fails to comply with this clause, the other party need not comply with it before commencing proceedings in any court or tribunal of competent jurisdiction. If a Dispute relates to the Supporter's membership in FBC, then such Dispute must be resolved in accordance with the terms of the Corporate Documents and not under this clause 10.

10.2 If any Dispute arises between the parties under this Agreement, the parties must at first instance endeavour to resolve it by discussion between those centrally involved. Both parties must continue to perform the Agreement despite the existence of any Dispute.

10.3 If the discussions under clause 10.2 have not resolved the Dispute, a party may at any time issue a notice (**Dispute**

Notice) to the other party formally notifying of the Dispute and seeking its resolution in accordance with this clause.

10.4 Upon the issuing of a Dispute Notice, senior executives or managers of each party meet and negotiate in good faith with a view to resolving the Dispute on a commercial and amicable basis.

10.5 If the Dispute has not been resolved by the nominated senior executives or managers under clause 10.4 within fifteen (15) Business Days of issuing the Dispute Notice, either party may commence litigation to resolve the Dispute.

11 Termination

11.1 Either party may terminate this Agreement by giving at least 90 days' notice in writing to the other party. This Agreement terminates at the expiration of the period of notice.

11.2 The other party may terminate this Agreement at any time by written notice to a party (**Defaulting Party**) if any of the following apply:

- (1) the Defaulting Party fails to carry out any provision of this Agreement, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 30 days after written notice to the Defaulting Party requiring it to be remedied;
- (2) the Defaulting Party fails to carry out any material provision of this Agreement and the failure is not capable of remedy; or
- (3) a controller, receiver, manager, administrator, provisional liquidator or liquidator appointed in relation to the Defaulting Party, the Defaulting Party becomes bankrupt or enters into a scheme of arrangement with creditors or is otherwise unable to pay its debts as and when they become due and payable.

11.3 On termination of this Agreement under this clause 11 each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

12 General provisions

12.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

12.2 This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

12.3 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

12.4 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

12.5 The law of the State of Victoria, Australia governs this Agreement. The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and of the Commonwealth of Australia.

13 Notices

13.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.

13.2 In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid priority post to the address of the addressee set out in this Agreement or separately provided or notified (including through the Online Portal);
- (2) sent by email to the email address of the addressee provided by the addressee on or about the date of this Agreement or separately provided or notified (including through the Online Portal); or
- (3) delivered at the address of the addressee set out in this Agreement or separately provided (including through the Online Portal).

13.3 The Supporter's initial email address will be the email address provided through the Online Portal. FBC's initial email address is info@futurebusinesscouncil.com.


13.4 If the Notice is sent or delivered in a manner provided by clause 13.2, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post, on the 3rd Business Day (at the address to which it is posted) after posting;
- (2) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

14 Definitions and interpretation

14.1 Definitions

In this Agreement, unless the contrary intention appears:

- (1) **Agreement** means the Supporter Terms and the consents, acknowledgements, agreements and information provided by the Supporter through the Online Portal;
- (2) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (3) **Commencement Date** has the meaning given in clause 2;
- (4) **Corporate Documents** means:
 - (a) if FBC is a company at the relevant time, the constitution of FBC as adopted and amended by FBC from time to time; or
 - (b) if FBC is an incorporated association at the relevant time, the Model Rules for an Incorporated Association in the form of Schedule 4 to the *Associations Incorporation Reform Regulations 2012* (Vic) and as adopted by FBC;
- (5) **FBC** means Future Business Council Incorporated (Organisation No. A0058829R) of 490 Spencer Street, West Melbourne, Victoria, 3003, Australia including any successor organisation from time to time;
- (6) **FBC Logo** means the following logo:

- (7) **FBC Mark** means Australian Registered Trade Mark No. 1629858 for "FUTURE BUSINESS COUNCIL";

- (8) **Intellectual Property** includes any copyright, design, patent, trade mark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for), trade, business, company or domain name, know-how, inventions, processes or confidential information (whether in writing or recorded in any form), and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;
- (9) **Loss** means any loss, whether present, unascertained, future or contingent, whether based in contract, tort, statute or otherwise, including, without limitation, any liability, cost, expense (including legal costs on a full indemnity basis), charge, interest, penalty, fee, fine, forfeiture, assessment, claim, proceeding, action, demand or damage whether direct or consequential;
- (10) **Online Portal** means the website or other Internet location where the Supporter provided its details and accepted the Supporter Terms;
- (11) **Personal Information** has the meaning given to that term in the Privacy Act;
- (12) **Privacy Act** means the *Privacy Act 1988* (Cth) as amended from time to time;
- (13) **Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth);
- (14) **Supporter** means the person who accepted the Supporter Terms through the Online Portal, and includes, if the individual accepting the Supporter Terms did so on as an employee or officer of, or otherwise on behalf of a body corporate or other legal entity, that body corporate or other legal entity;
- (15) **Supporter Terms** means this document, including any schedule or annexure to it; and
- (16) **Term** has the meaning given in clause 2.

14.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and assignees;
 - (e) a statute, regulation, code or other law or a provision of any of them includes any amendment or replacement of it and another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (f) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Clause headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.