

# Cox Automotive Australia – General Terms of Service

<p><b>Parties</b></p> <p>1 <b>Cox Automotive Australia Pty Ltd</b> (ABN 97 090 535 505) (<b>'Cox Automotive'</b>)</p> <p>2 <b>Supplier</b> being the supplier as specified in the Details (<b>'Supplier'</b>)</p> <p><b>1 Interpretation</b></p> <p>1.1 In this Agreement, capitalised terms not defined in these General Terms of Service have the meaning given that term in the Details, but in respect of all other capitalised terms unless the context otherwise requires:</p> <p><b>'Agreement'</b> means this agreement including these General Terms of Service and the Details;</p> <p><b>'Business Day'</b> means any day which includes a public holiday in Victoria, Australia but does not include a Saturday or Sunday.</p> <p><b>'Commencement Date'</b> means the date set out in the Details;</p> <p><b>'Confidential Information'</b> includes any information marked as confidential and any information received or developed by the Supplier during the term of this agreement, which is not publicly available and relates to processes, equipment and techniques used by Cox Automotive in the course of Cox Automotive'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;</p> <p><b>'Details'</b> means the document titled 'Details' to which these General Terms of Service are attached;</p> <p><b>'Designated Representative'</b> means an authorised representative of each party, as specified in the Details, and such replacement representative notified by that party from time to time;</p> <p><b>'Fees'</b> means the amounts payable by Cox Automotive for the Services, as specified in the Details, subject only to variations agreed in writing by both parties;</p> <p><b>'Health and Safety Law'</b> means the <i>Occupational Health and Safety Act 2004</i> (Vic), the <i>Model Work Health and Safety (WHS) Act 2009</i> (Cth) and any other applicable law in relation to the safety of workers and any other persons which apply to the Services;</p> <p><b>'Intellectual Property'</b> includes trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former;</p> <p><b>'Premises'</b> means the premise of Cox Automotive as set out in the Details or as nominated by Cox Automotive to the Supplier from time to time;</p> <p><b>'Personal Information'</b> has the same meaning as defined in the <i>Privacy Act 1988</i> (Cth) from time to time;</p> <p><b>'Privacy Laws'</b> means the <i>Privacy Act 1988</i> (Cth) including binding codes and guidelines under it and the Australian Privacy Principles, and all other applicable laws relating to privacy, including all associated regulations and guidelines, as amended from time to time;</p> <p><b>'Services'</b> means the services to be provided and the obligations to be performed by the Supplier under this Agreement, as more particularly described in the Details; and</p> <p><b>'Supplier Personnel'</b> means any person who carries out work for the Supplier in any capacity, including work as an employee, independent contractor or subcontractor (or an employee of or independent contractor to a subcontractor).</p> <p>1.2 In interpreting this Agreement, the following rules must be applied unless the context otherwise requires:</p> <p>a Headings to clauses are for reference only and are not an aid to interpretation.</p> <p>b References to statutory provisions will be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.</p> <p>c References to clauses are to clauses of this Agreement, and the Details form part of this Agreement.</p> <p>d a reference to A\$, \$A, dollar or \$ is to Australian currency.</p> <p>e a reference to time is to Victoria, Australia time.</p> <p>f References to a party are to a party to this Agreement and include that party's successors in title and permitted</p>	<p>substitutes and assigns (and, where applicable, the party's legal personal representatives).</p> <p>g All periods of time include the day on which the period commences and also the day on which the period ends.</p> <p>h Any date which is not a working day, upon or by which anything is due to be done, will be deemed to be a reference to the next working day.</p> <p>i Words importing the plural include the singular and vice versa and words importing gender import all genders.</p> <p>j Any obligation not to do something will be deemed to include an obligation not to suffer, permit, or cause that thing to be done.</p> <p>k All warranties, representations, indemnities, covenants, agreements, and obligations given or entered into by, or rights of, more than one person will be deemed to have been given or entered into, or conferred on them, jointly and severally.</p> <p>1.3 In the event of any inconsistency between these General Terms of Service and the Details, the Details shall prevail.</p> <p><b>2 Term</b></p> <p>2.1 This Agreement shall commence on the Commencement Date and, unless otherwise specified in the Details, shall continue (unless terminated earlier in accordance with its terms) until the Supplier has performed all of its obligations under this Agreement to the satisfaction of Cox Automotive.</p> <p><b>3 Supplier's obligations</b></p> <p><b>3.1 Provision of Services</b></p> <p>The Supplier agrees to provide the Services in accordance with the terms of this Agreement.</p> <p><b>3.2 Resources and personnel</b></p> <p>The Supplier must, at its own cost and expense, ensure that it has at all times sufficient equipment and other resources and has engaged suitable Supplier Personnel to deliver the Services in accordance with this Agreement. The Supplier must, when delivering the Services, meet any Personnel Requirements specified or otherwise requested by the Supplier. The Supplier shall be responsible for the quality and timely delivery of all Services.</p> <p><b>3.3 Personnel management</b></p> <p>The Supplier shall be responsible for the management of all Supplier Personnel performing the Services and the Supplier's obligations under this Agreement. The Supplier shall be solely responsible for payment of salaries and other benefits and withholding of applicable taxes and other deductions in relation to such persons.</p> <p><b>3.4 Primary responsibility</b></p> <p>The Supplier must supply the Services:</p> <p>a in accordance with the requirements and specifications of Cox Automotive as set out in the Details or as otherwise agreed between the parties in writing;</p> <p>b for a price that does not exceed the Fees; and</p> <p>c in accordance with the Delivery Dates set out in the Details or as otherwise agreed between the parties in writing.</p> <p><b>3.5 Delays</b></p> <p>If the Supplier becomes aware that it may not be able to meet any Delivery Dates set out in the Details or otherwise agreed between the parties, it must immediately notify Cox Automotive. The Supplier shall be responsible, accountable and liable to Cox Automotive for all reasonable losses and reasonable additional expenses which may be incurred by Cox Automotive as a result of the Supplier's delay.</p> <p><b>3.6 Right to cancel</b></p> <p>Without limiting any of Cox Automotive's rights under any law, Cox Automotive may in its sole discretion assess any Services provided by the Supplier during or after they are supplied. If the Services fail to meet the requirements of this Agreement, including under clause 3.8, or are unfit for the purpose required by Cox Automotive, then Cox Automotive may reject the Services. If Services are rejected pursuant to this clause, Cox Automotive shall not be liable to the Supplier for any amount in respect of the rejected Services.</p> <p><b>3.7 Contractors</b></p> <p>The Supplier may not engage contractors to perform the Services or any of its obligations under this Agreement except with Cox Automotive's prior written approval in each case, not to be</p>
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- unreasonably withheld. Any contract or agreement between the Supplier and a contractor that relates to the performance of the Services or the Supplier's obligations under this Agreement must be on terms that are substantially the same as this Agreement or on other terms approved by Cox Automotive in writing.
- 3.8 **Quality and standards**  
The Supplier shall carry out the Services and all other obligations under this Agreement with care, skill and diligence and shall employ techniques, methods, procedures and materials of a high quality and standard in accordance with best professional practice.
- 3.9 **Understanding requirements**  
The Supplier shall be deemed to have carefully examined and understood all relevant requirements and specifications of Cox Automotive as set out in this Agreement or as otherwise agreed between the parties. The Supplier shall not be entitled to any additional payment or other remedy, on the grounds of misinterpretation of any matter relating to this Agreement on which it could reasonably have satisfied itself by reference to Cox Automotive except where such misinterpretation has been caused by incorrect written information supplied by Cox Automotive.
- 3.10 **Compliance with law**  
The Supplier agrees at all times to comply with all statutes, bylaws, regulations, relevant codes of practice, and other lawful requirements relating to, or necessary to be met in, the performance of the Services and its obligations under this Agreement.
- 3.11 **Further assurances**  
The Supplier shall sign all documents and do all things necessary or desirable to give effect to this Agreement and will procure its Supplier Personnel to declare, make or sign all documents and do all things that may be necessary or desirable to give full effect to this Agreement.
- 4 **Quantity**
- 4.1 Cox Automotive does not undertake to order any minimum quantity or value of Services, unless otherwise provided in the Details.
- 5 **Fees and payment**
- 5.1 **Fees**  
The Fees payable by Cox Automotive to the Supplier in respect of the provision of the Services are as set out in the Details. The Supplier will not charge, and Cox Automotive will not be liable, for any expenses, charges, costs, fees except the Fees as set out in this Agreement.
- 5.2 **Waiver of Fees**  
Cox Automotive shall not be obliged to pay any Fees in respect of any Services supplied by the Supplier:  
a otherwise than in accordance with this Agreement; or  
b in order to remedy any default or deficiency in any Services.
- 5.3 **Disbursements**  
The Supplier shall be responsible for all disbursements incurred by it in the performance of the Services or its obligations under this Agreement.
- 5.4 **Invoices**  
The Supplier will invoice Cox Automotive the Fees for the Services within 5 Business Days of the end of the month following supply of the Services. The invoice must include the following details before payment can be approved and forwarded:  
a date of Services;  
b name of individual provided by the Supplier;  
c description of Services provided;  
d time allocated per task; and  
e the Supplier's ABN.
- 5.5 **Payment terms**  
Each invoice shall be payable in accordance with the Payment Terms.
- 5.6 **Disputed invoice**  
If Cox Automotive disputes any amount in any invoice or requires further information from the Supplier, Cox Automotive will notify the Supplier ("**Dispute Notice**") accordingly giving reasons for the dispute. If the dispute cannot be resolved within 30 days of the Dispute Notice, the dispute will be resolved in accordance with clause 17 (Disputes). Cox Automotive will not be liable to pay any amounts that are the subject of a bona fide dispute that Cox Automotive has notified to the Supplier until resolution of the
- dispute. The Supplier will continue to supply the Services notwithstanding any such dispute.
- 5.7 **GST**
- a In this clause 5.7, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- b For the purposes of this Agreement, where the expression GST inclusive is used in relation to an amount payable or other consideration to be provided for a supply under this Agreement, the amount or consideration will not be increased on account of any GST payable on that supply.
- c Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this agreement as GST inclusive, does not include an amount on account of GST.
- d Despite any other provision in this agreement, if a party ("**Supply Maker**") makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as GST inclusive): (i) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause ("**GST exclusive consideration**") is increased by, and the recipient of the supply ("**Recipient**") must also pay to the Supply Maker, an amount equal to the GST payable by the Supply Maker on that supply; and (ii) the amount by which the GST exclusive consideration is increased must be paid to the Supply Maker by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- e If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- 6 **Disclosure and ownership of Intellectual Property**
- 6.1 The Supplier must communicate to Cox Automotive promptly and fully all discoveries, improvements and inventions made or conceived by the Supplier or the Supplier's Personnel (either solely or jointly with others) in the course of performing the Services. This clause only relates to discoveries, improvements and inventions which are similar to the actual or anticipated business, work or investigations of Cox Automotive or which result from or are suggested by any work performed for Cox Automotive ("**Inventions**").
- 6.2 Any Inventions, whether or not they contain intellectual property rights capable of protection, remain the sole and exclusive property of Cox Automotive or its nominees.
- 6.3 The Supplier acknowledges that Cox Automotive (or its associated entities or persons) owns all Intellectual Property created by the Supplier in connection with the Services, that now exists or that later comes into existence.
- 6.4 The Supplier agrees to indemnify Cox Automotive fully against all liabilities, costs and expenses which Cox Automotive may incur as a result of any breach of this clause 6 by the Supplier or the Supplier's Personnel.
- 6.5 The obligations accepted by the Supplier under this clause 6 survive termination or expiry of this Agreement.
- 7 **Health and Safety**
- 7.1 **Cox Automotive Policies**  
The Supplier must, and must procure that Supplier Personnel must, comply with all policies, security arrangements, restrictions, and requirements notified to the Supplier by Cox Automotive in writing from time to time.
- 7.2 **Health and Safety**  
The Supplier must, and must ensure that any Supplier Personnel must, comply with all Health and Safety Law. Without limiting what the Supplier is required to do under this clause, the Supplier must:  
a co-operate with Cox Automotive with respect to all requests made by Cox Automotive relating to any Services to be carried out at the Premises;

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- b consult, cooperate and coordinate activities with Cox Automotive and any other relevant person in the performance of the Services to ensure the Supplier and Supplier Personnel understand:
- i the nature of health and safety obligations relating to the Services and how they will be carried out at an operational level;
  - ii the risks arising from the Services; and
  - iii the controls to be implemented to mitigate those risks;
- c participate in, or facilitate any health and safety audits, inspections or investigations conducted by Cox Automotive or by any regulatory authority; and
- d promptly follow all reasonable directions that Cox Automotive provides to the Supplier in relation to the Premises, including any directions to remove or secure any property which is under the control of the Supplier.
- 8 Insurance**
- 8.1 The Supplier shall effect and maintain (at its own cost) adequate insurance in respect of potential liability, loss or damage arising at common law or under any statute in respect of claims for property damage, personal injury, public liability and professional indemnity relevant to the performance of its obligations under this Agreement for such values as should be insured against in accordance with prudent commercial practice, but provided that the Supplier maintains at a minimum the insurances set out in the Details.
- 8.2 On request of Cox Automotive, the Supplier shall provide Cox Automotive with evidence of the insurance effected and maintained in accordance with clause 8.1, to Cox Automotive's satisfaction. During the term of this Agreement the Supplier shall provide Cox Automotive with updated evidence from time to time as may be required if the Supplier's insurance is renewed or varied.
- 9 Warranties**
- 9.1 The Supplier warrants, represents and undertakes that:
- a it has full power and authority to enter into and perform this Agreement in accordance with its terms;
  - b the performance of the Supplier's obligations under this Agreement will neither conflict with any obligation or duty owed to any third party nor infringe the rights of any third party;
  - c it will carry out the work by the date or dates agreed by the parties to this Agreement;
  - d it will carry out the Services with all due skill and diligence and in a good and workmanlike manner, and in accordance with the best practice within the industry of the Supplier ("**Best Practice**");
  - e it will use its best endeavours to achieve the requirements and specifications specified in the Details;
  - f the Supplier's employees and agents will have the necessary skills, professional qualifications and experience to perform the Services in accordance with Best Practice;
  - g it has obtained all necessary and required licences, consents and permits to perform the Services; and
  - h it is responsible for all costs, fees, expenses and charges for training necessary or required for the Supplier's employee and agents to perform the Services.
- 9.2 If the Supplier performs the Services (or any part of the Services) negligently or materially in breach of this Agreement, then if requested by Cox Automotive, the Supplier will re-perform the relevant part of the Services. Cox Automotive's request must be made within 6 months of the date on which the Supplier completes performing the Services / termination of this Agreement.
- 9.3 The Supplier covenants that the Supplier will be solely responsible for the payment to the Supplier'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 Supplier's employees or agents and to otherwise comply with legislation applicable to the Supplier's employees and agents.
- 9.4 The Supplier warrants that the Supplier may not incur any liability on behalf of Cox Automotive or in any way pledge or purport to pledge Cox Automotive's credit or accept any other or make any contract binding upon Cox Automotive without prior approval being given by Cox Automotive.
- 9.5 Each of the parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 9.6 **Benefit of third party warranties**  
The Supplier warrants that it will disclose and pass to Cox Automotive (or, if it is unable to do so, will hold for Cox Automotive's benefit) all warranties provided by third parties in respect of any Services or goods comprised in those Services.
- 10 Designated Representatives**
- 10.1 Each party shall provide a Designated Representative (or an agreed substitute) as a primary point of contact for the duration of this Agreement. The Supplier warrants that its Designated Representative shall have necessary authority on behalf of the Supplier to agree all matters between the parties in relation to this Agreement except as otherwise provided in this Agreement.
- 11 Indemnity/ Liability**
- 11.1 The Supplier indemnifies Cox Automotive from and against any claims, demands, loss, damages, costs or expenses whatsoever arising from the Supplier's (or a Supplier Personnel's) provision of or failure to provide the Services except to the extent that such consequences are caused, or contributed to, by Cox Automotive's unlawful, negligent, or wilful acts or omissions.
- 11.2 Notwithstanding any other provision in this Agreement to the contrary, no party will be liable to the other party for any indirect, consequential or special loss, cost or damage of any kind.
- 11.3 Notwithstanding any other provision in this Agreement to the contrary, and to the greatest extent permitted by law, Cox Automotive's entire liability to the Supplier shall never exceed the Fees paid or payable by Cox Automotive to engage the Supplier during the 12 month period prior to the event giving rise to any claim, if a 12 month period has not yet elapsed it will be on a pro-rated basis.
- 12 Relationship**
- 12.1 Independent contractors, not agent**  
Nothing in this Agreement should be interpreted as constituting either Cox Automotive or the Supplier as an agent, partner, or employee of each other and neither party may pledge the credit of the other nor represent to anyone that:
- a it is the other party; or
  - b it is an agent, partner or employee of the other party; or
  - c it has any power or authority to incur any obligation on behalf of the other party. The parties to this Agreement shall act as independent contractors in the performance of their obligations under this Agreement.
- 12.2 **Consumer**  
The Supplier acknowledges that for the purposes of this Agreement Cox Automotive is to be treated as a 'consumer' in accordance with the *Competition and Consumer Act 2010 (Cth)* and Australian Consumer Law.
- 13 Confidentiality and publicity**
- 13.1 The Supplier must keep Cox Automotive's, and any Related Body Corporate of Cox Automotive's, Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- 13.2 Cox Automotive and the Supplier acknowledge that information resulting from the activities of the Supplier pursuant to this Agreement will also be regarded as Confidential Information. The Supplier agrees that the Supplier's obligations in clause 13.1 extend to this category of information.
- 13.3 The Supplier's obligations with regard to the Confidential Information will continue for so long as the Confidential Information is maintained on a confidential basis by:
- a Cox Automotive in the case of Confidential Information pertaining to Cox Automotive's business; and
  - b Cox Automotive's relevant client, in the case of Confidential Information pertaining to the business of any of Cox Automotive's clients.
- 13.4 At the termination of this Agreement, or when earlier directed by Cox Automotive:
- a all Confidential Information must be returned to Cox Automotive, including all copies of the Confidential

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- Information or any extracts or summaries of the Confidential Information that the Supplier makes and any software that the Supplier creates based on the Confidential Information; and
- b the Supplier must erase and destroy any copies of any software containing or comprising the Confidential Information in the Supplier's possession or under the Supplier's control or that may have been loaded onto a computer possessed or controlled by the Supplier.
- 13.5 The Confidential Information does not include information which:
- a is generally available in the public domain otherwise than as a result of a breach of clause 13.1 by the Supplier; or
- b was known by the Supplier prior to Cox Automotive disclosing the information to the Supplier.
- 13.6 The Supplier agrees that Cox Automotive may require any of the Supplier's Personnel to sign a confidentiality agreement in a form that Cox Automotive approves, as a condition of Cox Automotive's acceptance of any of the Supplier's Personnel.
- 13.7 The Supplier agrees to indemnify Cox Automotive fully against all liabilities, costs and expenses which Cox Automotive may incur as a result of any breach of this clause by the Supplier.
- 13.8 The Supplier acknowledges that damages may be an inadequate remedy for breach of this clause 13 and that Cox Automotive may obtain injunctive relief against the Supplier for any breach of this clause 13.
- 13.9 No party may issue any press release of Confidential Information to the news media without the prior approval of all parties.
- 13.10 The Supplier may not use its association with Cox Automotive for the purposes of publicity or to promote the Supplier's business in any manner, without Cox Automotive's prior consent.
- 14 Force Majeure**
- 14.1 Neither party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances must 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 this Agreement by written notice to the other party.
- 15 Termination**
- 15.1 **Termination for default**  
Either party may immediately terminate this Agreement by notice in writing to the other if the other party has materially breached any of its obligations under this Agreement and:
- a that breach is not capable of remedy; or
- b the other party fails to remedy the breach within 30 days after written notice from the non-defaulting party specifying the breach and requiring it to be remedied.
- 15.2 **Termination for serious misconduct**  
Notwithstanding anything in this Agreement to the contrary, Cox Automotive may terminate this Agreement at any time by notice in writing to the Supplier, if the Supplier or any of the Supplier's Personnel is guilty of any dishonesty, serious misconduct or serious neglect of duty, in or in connection with the provision of the Services
- 15.3 **Termination for convenience**  
Subject to clause 15.6, Cox Automotive may, at its option, immediately terminate this Agreement without liability to the Supplier at any time by giving the Supplier 5 days' written notice.
- 15.4 **Additional rights of termination**  
Without prejudice to any other rights that Cox Automotive may have under this Agreement or at law, Cox Automotive may terminate this Agreement immediately by notice in writing if:
- a the Supplier transfers or assigns its rights or obligations under this Agreement, otherwise than in accordance with clause 18.1; or
- b the Supplier becomes, or threatens to become, or is at serious and substantial risk of becoming, subject to any form of insolvency administration including, without limitation, any resolution, procedure or proceedings relating to the Supplier's liquidation, inability to pay its debts as they fall due, insolvency or appointment of a receiver, receiver and manager, liquidator, provisional liquidator, statutory
- manager or similar officer, or if the Supplier makes an assignment for the benefit of its creditors.
- 15.5 **Consequences of termination**  
If this Agreement is terminated for any reason then:
- a the Supplier shall immediately cease to provide the Services, unless otherwise agreed by the parties in writing;
- b the Supplier shall promptly return to Cox Automotive all documents, information and items of property belonging to Cox Automotive that are in the Supplier's possession or control; and
- c Cox Automotive shall promptly return to the Supplier all property of the Supplier's that is in Cox Automotive's possession or control.
- 15.6 **Payment for work properly performed**  
Subject to clause 15.7, Cox Automotive's only obligation on termination of this Agreement shall be to pay the Supplier for Services properly supplied by the Supplier prior to the date of termination.
- 15.7 **Survival of clauses**  
The termination of this Agreement for any reason shall not affect the validity and enforceability of:
- a any rights of a party against the other party which have accrued up to and including, without limitation, termination; or
- b the provisions of this Agreement which by their nature survive termination namely clause 13 (Confidentiality), clause 9 (Warranties), clause 11 (Indemnities), and this clause 15(Termination).
- 16 Notices**
- 16.1 Any notice given pursuant to this Agreement will be deemed to be validly given if personally delivered, posted, or sent by email transmission to the address of the party to be notified set out in the Details or to such other address as the party to be notified may designate by written notice given to all other parties.
- 16.2 Any notice given pursuant to this Agreement will be deemed to be sufficiently given:
- a in the case of delivery, when received;
- b in the case of posting, on the second working day following the date of posting;
- c in the case of email transmission, when sent, provided that any notice personally delivered or sent by email either after 5 pm on a working day or on any day that is not a working day will be deemed to have been received on the next working day.
- 17 Disputes resolution**
- 17.1 **Disputes**  
Subject to the clause 17.3, any dispute arising under this Agreement must first be referred to mediation by either party if such dispute cannot be resolved by the party's Designated Representative within ten (10) working days of notice of the dispute or such other time as mutually agreed in writing by the parties, prior to a party commencing formal court proceedings.
- 17.2 **Conduct of mediation**  
The mediation must be referred to mediation administered by the Australian Commercial Dispute Centre (ACDC). The mediation must be conducted in accordance with the ACDC Commercial Mediation Guidelines which set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved.
- 17.3 **Urgent interlocutory relief**  
Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.
- 18 General**
- 18.1 **Assignment and subcontracting**  
Except as expressly provided for in this Agreement the Supplier may not assign, transfer or subcontract its rights or obligations under this Agreement without the prior written consent of Cox Automotive, which shall not be unreasonably withheld. If the Supplier is permitted to subcontract its obligations in accordance with clause 3.7, the Supplier shall not be relieved of any of its liabilities or obligations under this Agreement and it shall be liable to Cox Automotive for the acts, defaults, and neglects of any subcontractor (or any employee, contractor, or

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- agent of the subcontractor) as if they were the Supplier's own acts, defaults, or neglects.
- 18.2 **Priority**  
In relation to the provision of Services to Cox Automotive, this Agreement supersedes and takes priority over any other terms and conditions of trade that the Supplier may have.
- 18.3 **Entire agreement**  
This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.
- 18.4 **Amendments**  
No amendment to this Agreement will be effective unless it is in writing and signed by all the parties.
- 18.5 **Waiver**  
No exercise or failure to exercise or delay in exercising any right or remedy by any party will constitute a waiver by that party of that or any other right or remedy available to it.
- 18.6 **Severability**  
If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 18.7 **Counterparts**  
This Agreement may be executed in two or more counterpart copies each of which will be deemed an original and all of which together will constitute one and the same instrument. A party may enter into this Agreement by signing a counterpart copy and sending it to the other parties (including by email or other electronic means).
- 18.8 **Rights cumulative**  
The rights of the parties under this Agreement are cumulative and are not exclusive of any other rights and remedies available to any party.
- 18.9 **Governing law and jurisdiction**  
This Agreement shall be governed by and construed in accordance with the law of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.
- 18.10 **Records**  
The Supplier shall:  
a keep full, true, clear, and separate books and records in English of all transactions to which this Agreement applies; and  
b permit Cox Automotive, or its duly authorised representatives, at any reasonable time (and from time to time) during business hours, access to inspect and verify all books and records of any transaction to which this Agreement applies.