

# Terms of Use - Taly

Last updated June 2015.

These Terms of Use are provided by The People Idea Pty Ltd (ACN 602 736 836) (**Taly**) and govern your use of the **Survey**.

Taly is the creator and owner of the Materials and the Services.

By accessing the Survey, you agree to be bound by these Terms of Use. If you do not agree to be bound by these Terms of Use, you must stop Using the Survey immediately.

Taly may amend these Terms of Use from time to time. If any amendments are made, they will be effective immediately upon being posted on this page. If you continue to Use the Survey after the Terms of Use are amended, you agree to be bound by the amended Terms of Use.

## 1. Definitions

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**Client** means an entity that has engaged Taly to supply the Services;

**Client User** means you (usually an employee of the Client), being a person who is required or authorised by the Client to access and use the Materials;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable;

**Materials** means the Survey(s), the Report(s) and all other materials supplied by Taly;

**Personal Information** means information or an opinion about an identified individual or an individual who is reasonably identifiable.

**Report** means the report generated by Taly in relation to a Survey or series of Surveys;

**Responses** means the Client User's responses to the Survey(s);

**Services** means the provision of the Survey(s) and the Report(s) and all training, support and presentations given in relation to the Survey(s) and the Report(s);

**Survey** means the five factor survey custom designed, written and built by Taly; and

**Use** means access, view, read, use, download, copy or print and "Using" has the equivalent meaning.

## 2. Terms of Use

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### 2.1 Background

The Survey is provided to you in your capacity as a Client User for the purpose of obtaining the Responses to facilitate the provision of the Services to the Client.

## 2.2 Use of the Survey

- (a) You are provided with access to the Survey(s) for the sole purpose of providing the Responses.
- (b) Except where expressly permitted by law, you may not interact with, reproduce or Use any content comprising the Survey or any other Materials for any other purpose without our prior written permission.
- (c) You agree to provide honest and truthful Responses with respect to the Survey(s).

## 2.3 Intellectual Property Rights

- (a) You acknowledge and agree that Taly is the exclusive owner of the Intellectual Property Rights in the Materials.
- (b) You shall not own any Intellectual Property Rights in the Materials or any other materials brought into existence by Taly for the purpose of providing the Services, including Services commenced or enhanced after the date of this Agreement.
- (c) You grant to Taly a worldwide, irrevocable licence to use and exploit the Responses and all Intellectual Property Rights in the Responses.
- (d) To the extent that you at any time acquire any right, title or interest in any Intellectual Property Rights in the Materials, you assign to Taly all such rights, title and interest.
- (e) You will execute all documents and do all acts and things required by Taly for the purpose of giving effect to this clause.
- (f) Except as expressly authorised by these Terms of Use, you may not in any form or by any means, without our prior written permission:
  - (i) adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of the Materials, (other than for the purposes of, and subject to the conditions prescribed under, the *Copyright Act 1968* (Cth) and similar legislation that applies in your location); or
  - (ii) commercialise any information, products or services obtained from any part of the Materials.

## 2.4 Trade Marks

The Materials contain trade marks (both registered and unregistered) owned or licensed by Taly (**Trade Marks**). If you use any of the Trade Marks in reference to our activities, products or services, you must include a statement attributing those Trade Marks to us (or, where applicable, to the relevant owner of that Trade Mark). You must not use any of the Trade Marks:

- (a) in or as the whole or part of your own trade marks;
- (b) in connection with activities, products or services which are not ours or our sponsors;
- (c) in a manner which may be confusing, misleading or deceptive; or
- (d) in a manner that disparages us, our sponsors or the information, products or services (including the Materials) of us or our sponsors.

## **2.5 Privacy**

- (a) You accept and agree that in the course of providing the Responses Taly may collect Personal Information, including your name, address, contact details, position description and employment information (and other information reasonably required for the provision of the Services) for the purposes of preparing the Report(s) and providing the Services.
- (b) You accept and agree that your Personal Information will be used for the purpose of creating the Report(s) and may appear in the Report(s).
- (c) You accept and agree that any Responses may be disclosed to the Client, and the Client, whether directly or indirectly may use and disclose same in connection with receiving the Services and otherwise for its own internal purposes.
- (d) To the extent that Taly may be regarded as obtaining a benefit, service or advantage in connection with the conduct of the Survey, collecting the Responses and preparing the Report or providing the Services, you consent to your Personal Information being collected and disclosed to Taly for that purpose.

## **2.6 Linked Websites**

Any links to external websites provided in the Materials are provided for convenience only, and they may not remain current or be maintained. Links to external websites are not endorsements, approvals or recommendations of the linked websites, content on the linked websites or of their owners or operators. We are not responsible for the privacy practices of any linked websites, and do not assume any responsibility for material accessed by links to external website.

## **2.7 Warranties and Liability in relation to the Website**

- (a) This clause 2.7 is subject to the Liability provisions at clause 3 below.
- (b) We do not represent, promise or warrant that information you submit will be protected against loss, misuse or alteration by third parties.
- (c) We are not responsible for any loss resulting from you or anyone else taking action or relying on any content in the Materials
- (d) You acknowledge that we are not liable to you for any loss or damage, however it is caused, that arises from you downloading content or subsequently using any downloaded material.

# **3. Liability**

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## **3.1 Exclusion of terms and warranties**

- (a) To the full extent permitted by law, Taly expressly excludes all terms, representations and warranties that otherwise would be implied by law into these Terms of Use.
- (b) If any legislation implies in these Terms of Use any term or warranty, imposes any statutory guarantee, or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such a term, warranty or statutory guarantee, that term or warranty is deemed to be included in these Terms of Use or statutory guarantee (as the case may be).

### **3.2 Restriction of liability**

Where any term or condition imposing liability is implied through the operation of any law, or statutory guarantee imposed, and that term, condition or statutory guarantee cannot be excluded, the liability of Taly for a breach of such a term or warranty will be limited, at the option of Taly, to any one or more of the following:

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

### **3.3 Limitation of liability**

If Taly is held or found to be liable to you for any matter relating to or arising in connection with these Terms of Use, whether based on an action or claim in contract, negligence, tort or otherwise, the maximum aggregate liability of Taly in respect of all claims made by you will be an amount equal to AUD\$1 regardless of whether those claims arise out of a single event or a number of different events.

### **3.4 No liability for consequential loss**

Notwithstanding anything else in these Terms of Use, Taly expressly excludes liability for:

- (a) indirect, special, incidental, or consequential loss or damage which may arise in respect of this Agreement, the Service, the Materials or in respect of any equipment or property;
- (b) loss of employment or loss of opportunity; and
- (c) loss of profit, business, revenue, goodwill or anticipated savings.

## **4. General provision**

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### **4.1 Notices**

Any notice required or contemplated by these Terms of Use is deemed to have been properly given if it is in writing, properly addressed and delivered personally, or mailed postage prepaid or by fax to the Client or Client User's principal place of business or last known address.

### **4.2 Governing law and jurisdiction**

- (a) This document is governed by and construed under the law of the State of Victoria, Australia.

- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria.
- (c) By agreeing to these Terms of Use, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

#### **4.3 Waivers**

Any failure by a party to exercise any right under this document does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### **4.4 Severability**

Any clause of this document which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this document or the validity of that clause in any other jurisdiction.