

## INFOTRUST PROFESSIONAL SERVICES TERMS AND CONDITIONS

### Background

- A. Customer wishes to appoint InfoTrust as a provider of IT services.
- B. InfoTrust wishes to be appointed to provide services to Customer.
- C. Both Customer and InfoTrust intend for this Agreement to operate as a framework whereby Customer and InfoTrust agree Statements of Work (SOW) on an as needs basis.

### 1. Interpretation

In this Agreement:

- 1.1. references to any law or regulation includes any change, consolidation, replacement, re-enactment or extension of the law or regulation
- 1.2. reference to a document is a reference to the document as from time to time supplemented or varied
- 1.3. references to Clauses, Schedules and/or parties are to Clauses of and Schedules and/or parties to this Agreement, respectively
- 1.4. headings are for reference only and do not affect the meaning of this Agreement.

### 2. Term

- 2.1. This Agreement will commence on the Commencement Date and will continue in force unless terminated in accordance with its terms.
- 2.2. InfoTrust and Customer agree that each SOW is severable from the others and that the termination or cessation of a SOW in accordance with this Agreement does not affect the ongoing nature of all other SOWs and this Agreement. InfoTrust and Customer acknowledge that the commercial terms of each SOW are defined by that SOW.

### 3. Services

- 3.1. InfoTrust will provide the Services to Customer in accordance with the terms of this Agreement and the relevant SOW.

### 4. Amount of the charges

- 4.1. Subject to InfoTrust providing the Services under an SOW, Customer will pay InfoTrust the Charges.
- 4.2. Customer will reimburse to InfoTrust all reasonable travel and hotel expenses incurred by InfoTrust in connection with the provision of the Services.

### 5. Payment of the charges

- 5.1. All Charges are due and payable as set out in an SOW. Where Charges relate to InfoTrust purchase of goods connected with the Services, InfoTrust is not obliged to make such purchases until such time as the relevant Charges are paid and any delay caused by late payment is at the cost and risk of Customer only.
- 5.2. In connection with Time and Materials Services, InfoTrust will submit to Customer an invoice monthly (in arrears) or upon completion of the Services that have been delivered
- 5.3. In connection with ongoing Services, InfoTrust will submit to Customer invoices monthly (in arrears) in connection with those Services provided under an SOW.
- 5.4. In connection with Services delivered under a fixed price, InfoTrust will submit to the Customer invoices at milestones set out in the SOW.
- 5.5. Except as otherwise provided in this Agreement, all sums due under this Agreement will, unless the subject of a bona fide dispute, be paid by Customer within 30 days of the date of the invoice issued by InfoTrust.
- 5.6. Where any amounts due to InfoTrust under this Agreement have not been paid, InfoTrust may suspend all Services (without any liability to Customer) until such time as all amounts due are paid in full.

### 6. GST

- 6.1. The Charges and all other amounts payable under this Agreement are expressed exclusive of GST. Customer must pay to InfoTrust an amount equal to the GST payable in respect of the supply of the Services, in addition to the Charges or other consideration (if any) required to be paid under any other provision of this Agreement.

### 7. Access

- 7.1. Customer will co-operate with InfoTrust in all respects in connection with the provision of the Services and will allow InfoTrust and its sub-contractors reasonable access to the systems and premises to the extent necessary for InfoTrust to provide the Services.

### 8. Health and safety

- 8.1. Customer will notify InfoTrust of any health and safety hazards which may exist and which may affect InfoTrust or its sub-contractors.

### 9. Warranties

Customer and InfoTrust represent and warrant that:

- 9.1.1. it is duly incorporated in accordance with the laws of its jurisdiction, validly exists

9.1.2. under those laws and has capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted

9.1.3. it has capacity unconditionally to sign and deliver and comply with its obligations under this document

9.1.4. it is not insolvent, and

9.1.5. any information that it has given to another party in connection with this document is true and accurate in all material respects and not misleading in any material respect (including by omission) as at the date of this document or, if given later, when given.

Each party acknowledges that each other party has entered into this document in reliance upon the representations and warranties in this clause 9.

## **10. Liability**

10.1. Subject to and without limiting clauses 10.2, 10.3 and 10.4 below, the total aggregate liability of InfoTrust for a Claim or Claims under or in connection with an SOW arising from all matters occurring in any Contract Year is limited to 100% of the Charges paid by Customer to InfoTrust under the relevant SOW in that Contract Year.

10.2. The law implies various terms, conditions, guarantees and warranties which may apply to InfoTrust supplying goods or services to Customer. InfoTrust excludes all of those terms, conditions and warranties, and any other term condition and warranty that might have otherwise have been implied by custom or otherwise, to the full extent permitted by law.

10.3. Provisions of the *Competition and Consumer Act* (Cth) 2010 in some cases either cannot be excluded, restricted or modified, or can only be restricted or modified to a limited extent. If any such provisions do apply, then to the extent permitted by law InfoTrust's liability under those provisions is limited;

10.3.1. in relation to goods is limited to replacement of the goods or the supply of equivalent goods, or repair of the goods, or payment of the cost of replacing the goods or of acquiring equivalent goods, or payment of the cost of having the goods repaired; and

10.3.2. in relation to services is limited to the supplying of the services again, or the payment of the cost of having the services supplied again.

10.4. To the extent permitted by law, neither party will be liable to the other in respect of any Claim (whether such claim is made under an indemnity or otherwise) or on any other basis for any loss of profit, goodwill or business, loss of opportunity, increased financing costs, any failure to realise anticipated savings or for any consequential, indirect, special, punitive, remote or incidental damages.

## **11. Confidentiality**

11.1. Each party will keep the other party's Confidential Information confidential, not disclose any Confidential Information to a third party, other than as will of necessity acquire it as a consequence of the performance of that party's obligations under this Agreement, and use Confidential Information only in connection with the proper performance of this Agreement.

11.2. Clause 11.1 will not apply to any Confidential Information to the extent that it comes within the public domain other than through breach of clause 11.1, is required or requested to be divulged by any authority with competent jurisdiction to which either party is subject, wherever situated, is known to the receiving party before the disclosure to it, or is disclosed with the other party's prior written approval to the disclosure.

## **12. No reliance**

InfoTrust relies on the statements set out in this clause as essential conditions of this Agreement. Customer has not relied on any representation made or implied by InfoTrust or arising out of or implied by its conduct save for as expressly set out in this Agreement. To the extent that InfoTrust has made or implied, or by conduct given rise to or implied, any representation that is not expressly stated in these conditions, Customer is not proceeding in reliance on the representation. InfoTrust makes no promise, representation or otherwise in relation to any benefit Customer may obtain by entering into this Agreement save as set out herein and InfoTrust guarantees in no way any increased sales, transactions, revenue, goodwill or profit or any other benefit that may flow from Customer having entered into this Agreement.

## **13. Relationship of the parties**

InfoTrust is an independent contractor dealing at arm's length and nothing in this Agreement will be deemed to constitute a partnership, joint-venture, co-ownership or any employment relationship between the parties nor will anything in this Agreement be deemed to constitute one party as the agent of the other.

## **14. Termination**

14.1. Either party may terminate this Agreement (or any SOW) with immediate effect by writing to the other party if the other party ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of this Agreement), or becomes insolvent, or is unable to pay its debts as they fall due, or has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, or makes any composition or arrangement with its creditors, or an order or resolution is made for its

dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or takes or suffers any similar or analogous procedure to any of the events described in this clause in any jurisdiction.

14.2. Where a party terminates this Agreement (or an SOW) in accordance with its terms it may sue for (but not limited to) any loss or damage in any way connected to the loss of future benefit of this Agreement.

## 15. General

15.1. If a party by reason out of their control is unable to perform or carry out any obligation under this document, then that obligation is suspended for so long and to the extent that it is affected by that reason. This clause does not apply to any obligation to make a payment.

15.2. The parties do not intend any third party to have the right to enforce any provision of this Agreement.

15.3. This document contains the entire agreement between the parties about its subject matter and supersedes all prior discussions, representations, agreements and understandings between the parties in connection with the subject matter.

15.4. In the event of any conflict or inconsistency between this Agreement (excluding an SOW) and an SOW, the provisions of this Agreement (excluding the SOW) will prevail.

15.5. Any changes to this Agreement must be agreed by the parties in writing.

15.6. No failure, delay, relaxation or indulgence on the part of a party in exercising any right, power, privilege or remedy in connection with this document, operates as a waiver of that right, power, privilege or remedy.

15.7. Except as expressly provided under this Agreement, the rights and remedies contained in this Agreement are cumulative and are not exclusive of any other rights or remedies provided by law or otherwise.

15.8. If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term will, to the extent it is severable from the remaining terms, be deemed omitted from this Agreement and will not affect the legality, validity or enforceability of the remaining terms.

15.9. This document may be signed in any number of counterparts and each of those counterparts taken together constitute one and the same document.

15.10. Any notice given under this document must be in writing, addressed to the intended recipient at the address shown in this document, (or updated address as relevant).

15.11. This Agreement will be governed by the law of New South Wales and each party agrees to submit any dispute which may arise out of, under, or in connection with this Agreement to the exclusive jurisdiction of the courts of New South Wales.

15.12. This document may only be amended, supplemented, replaced or novated by another document signed by each of the parties, whether in one or more counterparts.

15.13. Each party must bear its own costs including legal costs in connection with the preparation and signing of this document. Customer must pay any stamp duty in respect of this document.

15.14. Each person signing this document on behalf of a party, warrants to the other parties that on the date of signing, that person has full authority to sign this document on behalf of that party.

## 16. Definitions

In this Agreement the following expressions have the meanings stated:

**Act** means the *Privacy Act 1988* (Cth).

**Agreement** means this written agreement, including the Schedules and any SOW.

**Charges** means the charges to be paid by Customer for the Services calculated in accordance with an SOW.

**Claim** means any claim made under or in connection with this Agreement or its subject matter, whether arising under contract, negligence or any other tort, under statute or otherwise.

**Commencement Date** means the date of this document.

**Confidential Information** includes all written, electronic or oral information relating to the business or assets of each party and its customers, clients and InfoTrust's; the terms or subject matter of this Agreement, and the negotiations relating to this Agreement.

**Contract Year** means any consecutive twelve (12) month period beginning from the Commencement Date or any shorter period that may occur between the anniversary of the Commencement Date and the termination of an SOW.

**GST** means a good and services tax, value added tax, consumption tax or services tax.

**Services** means the services specified in a SOW to be provided by InfoTrust under this Agreement.

**SOW** means a statement of work in the form of Schedule 1 which sets out the Services and Charges per project between Customer and InfoTrust.

### Schedule 1 - SOW Format

InfoTrust statement of work for the delivery of the Services described in Part B of this Statement of Work (SOW), in accordance with the quotation conditions and the contract under which this SOW is raised.

The parties to this SOW agree to be bound by the terms of this SOW and acknowledge that this SOW is governed by InfoTrust Contract. To the extent of any inconsistency between this SOW and InfoTrust Contract, InfoTrust Contract shall prevail to the extent of the inconsistency.

Part A sets out the parties to this SOW, Part B defines the scope of services, and Part C set out the fees for the provision of the Services.

#### Part A – Party details

<b>Customer Details</b>	
Customer Name	
Contact Name	
Email	
Phone	
SOW Issue Date	
Date of InfoTrust Agreement which governs this SOW	Date of Agreement..... Initial.....

<b>Service Provider Details</b>	
Service Provider	InfoTrust
Project Manager	
Email	
Phone	

#### Part B – Scope of Services

Scope of Services and estimated time to complete

Item Description	Estimated Time
<b>TOTAL ESTIMATED DAYS</b>	

#### Part C – Prerequisites

List of all prerequisites required to be in place to ensure InfoTrust can complete the services as described.

<b>Prerequisite Description</b>

#### Part D – Charges

- This engagement will be billed for Time and Materials at a rate of \$XXX per day.
- Customer must pay the total amount due in accordance with the payment terms outlined in the InfoTrust Agreement.
- InfoTrust will invoice the amounts detailed below upon completion of each milestone, or monthly in arrears, in accordance with the terms of the agreement. The charges listed are exclusive of any applicable taxes. Such taxes will be added to any invoice for the services at the rate current at the date of the invoice.

#### Summary of Charges

Item Description	Per Unit Fee	Quantity	<b>Total</b>
Professional Services (per day)	\$X,XXX.XX	X days	\$X,XXX.XX
<b>Total Estimated Cost</b>			<b>\$X,XXX.XX</b>