

Terms of Service

TERMS & CONDITIONS

1 Agreement

These are the terms that apply to you and us in the provision of the Services (other than those that are implied and can't be excluded by law) and you acknowledge that we can vary these terms and conditions without notice to you. Any other terms you provide us which are contrary to or inconsistent with these terms don't apply and they don't constitute a counter-offer. By receiving the Services, you will be deemed to have accepted these terms and they will apply to the exclusion of any others. You acknowledge that additional terms and conditions may apply to the provisions of the Services (depending on the type of Services we are supplying) and you agree that these terms also apply to the provision of those Services.

2 Payment Terms

2.1 You must pay us for the delivery of Goods and Services at the rates set out and calculated in accordance with the relevant Schedules during the Term. We reserve the right to increase rates from time to time in line with the greater of Consumer Price Index (CPI) or Average Weekly Ordinary Time Earnings (AWOTE) as published by Australian Bureau of Statistics. You will receive written notice of any such increases.

2.2 Payment is to be made by either direct bank deposit as per schedule or due on or prior to fourteen (14) days from the date of invoice rendered in respect of the supply of the Goods or Service unless otherwise stated in writing by us. We may charge liquidated damages at a rate equivalent to two percent (2%) in excess of the rate of interest for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 if payment is not received by the due date.

2.3 We are entitled to set-off against any money owing to you amounts owed to us by you on any account whatsoever.

2.4 Any payments received from you on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in Clause 2.5, and then to principal.

2.5 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by us for enforcement of obligations and recovery of monies due from you to us.

2.6 You acknowledge that we reserve the right to temporarily suspend the provision of the Services to you if you are late in paying us amounts due under this Agreement on the provision of seven days written notice to you.

3 Definitions and Interpretation

3.1 The following definitions have the meaning given to them:

Acceptable Use Policy means our or our suppliers acceptable use policy as updated by us from time to time.

Agreement means this Agreement and any other terms and conditions of ours which apply to the provision of the Services.

Confidential Information means all information of a party in any form including, without limitation, trade secrets, know-how, processes, techniques, source and object codes, passwords, encryption keys, software, computer records, business and marketing plans and projections, details of agreements and arrangements with third parties, customer information and lists, designs, plans, drawings and models and any other information which a party informs the other party is confidential

End User means any end user of the Services linked (by notification from you) with your Agreement with us.

Equipment means any equipment provided to you by us in accordance with this Agreement regardless of whether the equipment is owned by us or by a third party supplier in respect of the Equipment.

Services means the services described in the Proposals, Quotations and Schedules.

We/us/our means Infocore Pty. Ltd T/As Call IT Corporate A.B.N. 74 135 184 600

You/Your means the company, person or entity referred to in the Customer Application Form. If there are more than one, you means each of them separately and every two of them jointly. You includes your executors, administrators and assigns. When two or more parties to the Customer Application Form, your undertakings bind you jointly and severally.

Your Content means software, data, text, audio, video, images or other content you or any other end user (a) run on the Services, (b) cause to interface with the Services, or (c) upload to our infrastructure (d) reside on your own infrastructure or otherwise transfer, process, use or store on our infrastructure in connection with this Agreement.

3.2 The Schedules and appendices form part of this Agreement.

3.3 A reference in this Agreement to:

- the singular includes the plural and vice versa;
- a document includes any variation or replacement of it; and
- anything includes the whole or each part of it.

3.4 Even though we drafted this Agreement, the fact we drafted the Agreement is not to be construed adversely against us.

4 Service Level Agreements

The provision of Services under this Agreement may be subject to Service Level Agreements set out in a Schedule to this Agreement. It is not intended, unless expressly provided otherwise, that the Service Level Agreement relating to particular services will supersede the terms of this Agreement. Service Level Agreements may be changed from time to time by notice in writing to you.

The provision of services provided by third parties under this agreement form part of the service level agreement set out in the same schedules. Third Party Service Level Agreements may be changed from time to time by notice in writing to you.

5 Hardware as a Service

Where we provide Equipment to you as a part of the Services to be held by you during the Term of this Agreement, you acknowledge and agree that:

5.1 This Agreement creates a PPS lease, as defined in the PPS Act, we have a security interest in the Equipment (as well as the proceeds of any sale or insurance claim in respect of the Equipment and monies held in a separate account arising from the sale of the Equipment) for the purposes of the Personal Property Securities Act 2009 (Cth) as amended (the PPS Act), and to the extent applicable the PPS Act applies.

5.2 You warrant that any Equipment supplied by us are not supplied predominantly for personal, domestic or household purposes and you agree to indemnify us against any loss or damage arising from a breach of such warranty.

5.3 We may do anything reasonably necessary, including but not limited to registering any security interest which we have over the Equipment and/or any property inside the Equipment on the Personal Property Securities Register established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirement of the PPS Act. You agree without charge to provide all information and do all things reasonably necessary to assist us to undertake the matters set out above. You waive pursuant to s.157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the register.

5.4 You and we agree that, to the extent that the security interest we have over the Equipment is a PPS lease, as defined in the PPS Act, does not secure payment or performance of an obligation, then chapter 4 of the PPS Act does not apply.

5.5 You must at your cost maintain the Equipment in good repair and safe operating condition and agree to:

- return the Equipment in clean and good condition and free of labels and graffiti
- pay us on demand for any costs necessary to clean and repair the Equipment.

5.6 Except for normal wear and tear, you must pay us on demand for all damage to, loss or destruction of, the Equipment that occurs during the Term or while the Equipment is in your control or possession, and for any losses, costs and expenses arising due to a failure to comply with this clause.

5.7 You must insure, and maintain the insurance of, the Equipment whilst it is within your control or possession for the insurable value of the Equipment.

5.8 You grant us an irrevocable licence to enter your premises and use any reasonable means to recover the Equipment without liability for trespass or damage where you are in breach of this Agreement.

6 Infrastructure as a Service

6.1 As a part of this Agreement we may provide infrastructure services to you.

6.2 As between you and us, you or your licensors own all right, title and interest in and to Your Content. You consent to our use of Your Content to provide the Service to you or any End Users and you acknowledge that we may disclose Your Content to comply with any request of a governmental or regulatory body (including to comply with subpoenas or court orders).

6.3 You represent and warrant to us that:

- You or your licensors own all right, title and interest in and to Your Content;
- You have all rights in Your Content to grant the rights contemplated by this Agreement; and
- none of Your Content will violate our Acceptable Use Policy.

7 GST

Prices specified in this Agreement are GST exclusive.

8 Notification

You must notify us in writing within seven (7) days of:

- Any alteration of the name or ownership of you.
- The issue of any legal proceedings against you.
- The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to you.
- Any change in the ownership of the business name you use. You agree that you shall be liable to us for all Services supplied to the new owner by us until notice of any such change is received.

9 Intellectual Property Rights

9.1 You agree that if we develop intellectual property in the course of providing the Services to you (other than intellectual property subsisting in Your Content), including as a result of any suggestions to us, that such intellectual property is owned by us, and we have the right to exploit that intellectual property in any way we choose. You agree to enter into any additional agreement

or assign any necessary rights to allow us to give effect to this clause, and, where possible you are deemed to have assigned those rights to us immediately upon their creation.

9.2 You agree that we may use your name, logo and testimonial (if such testimonial is provided) in our promotional material and communications including but not limited to, proposals, presentations, websites and our corporate brochure.

9.3 Neither you or any End User may use may, or may attempt to:

- modify, alter, tamper with, repair, or otherwise create derivative works of any software or other intellectual property included in the Service (except to the extent software included in the Service are provided to you under a separate license that expressly permits the creation of derivative works);
- reverse engineer, disassemble, or decompile any software or other intellectual property provided to you by us in our performance of the Services or apply any other process or procedure to derive the source code of any software provided to you in our performance of the Services
- access or use our Services in a way intended to avoid incurring fees, or exceeding usage limits or quotas; or
- resell or sub-licence our Services.

9.4 You will not assert, nor will you authorise, assist or encourage any third party to assert, against us, or any of our affiliates, customers, vendors, business partners or licensors, any patent infringement or other intellectual property infringement claim regarding any Services.

9.5 Any intellectual property provided by us to you during the course of this agreement is provided under a non-exclusive licence and you acknowledge that the licence terminates immediately upon termination of this Agreement and must no longer be used but must be returned immediately, and where it cannot be returned, must be destroyed.

10 Indemnity

You indemnify us, and each of our employees, officers, directors and representatives against any liability, loss, damage, claims, costs or expense caused by your unlawful or negligent acts or omissions or for any breach of this Agreement.

11 Confidentiality

11.1 The parties must maintain and protect absolute confidentiality concerning Confidential Information unless the information comes into the public domain through no breach of this clause. A party may make such disclosures as it may in its absolute discretion think necessary to:

- its legal advisers;
- its financial advisers and financiers upon those persons agreeing to maintain and protect absolute confidentiality of any information disclosed to them; and
- to comply with any applicable law or the requirement of any regulatory body (including any relevant stock exchange).

11.2 This clause doesn't apply to any Confidential Information which:

- was known by a party prior to its receipt from the other party; or
- Is provided to a party by a third party having no obligation to the disclosing party with respect to the Confidential Information.

12 Notices

12.1 All notices must be in writing. You can give us notices in person, by post or by fax to the address or fax number we have provided. We can give you notice:

- In person
- by leaving it at your last known address
- by email or fax to the email address or fax number specified in the Customer Application Form
- any other way permitted by law.

12.2 Notices take effect:

- On the day they would be received in the ordinary course of post, if sent by post;
- At the time shown in a transmission report, if the machine creates a report showing that the fax was sent in full, if sent by fax machine; or
- On the day the email enters the system of the host of your email address or internet service provider if sent by email.

13 Limitation of Liability

13.1 We do not limit our liability in respect of fraud, the death of, or personal injury to, or any person caused by negligence.

13.2 However, except as otherwise limited by law, the total aggregate liability under or in relation to this Agreement (whether the liability arises due to breach of contract, negligence or for any other reason and in respect of each event and a series of connected events) shall be limited to the greater of:

- The total payable by you to us in the first 12 months of this Agreement; or
- The actual amount paid by you to us during the previous 12 months of this Agreement.

13.3 Subject to clause 13.1 and clause 14, we do not accept liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason), for any loss of profits, loss of sales, or turnover, loss of or damage to reputation, loss of contracts, loss of customers, loss of software or data, losses or liabilities under or in relation to any other contract, directly or indirectly due to network access by third parties or special loss or damage. For the purpose of this includes a partial loss or reduction in value as well as a complete or total loss.

14 Warranties

No warranties except those implied and that by law cannot be excluded are given by us in respect of Services supplied. Where it is lawful to do so, our liability for a breach of a condition or warranty or this Agreement is limited to the repair or replacement of the Equipment (if Equipment is supplied) or the cost of obtaining equivalent Equipment or the supply of the

Services again or the cost of obtaining equivalent Services. The supply of Equipment comes with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and to compensation for any other reasonable foreseeable loss or damage. You are also entitled to have the Equipment repaired or replaced if it fails to be of acceptable quality and the failure does not amount to a major failure.

15 Early Termination Charges

15.1 If, as a part of providing you with the Services, we have entered into a third party agreement with a supplier for the supply of equipment and/or services which have been on supplied to you, and you terminate this Agreement early, you agree that we may recover the costs and expenses related to such third party agreement, as a debt on written demand to you and payable within thirty days of the date of the notice. We acknowledge that this does not abrogate our responsibility to minimise our losses in respect of this, and we will make reasonable endeavors to minimise our loss arising under this clause.

15.2 If this Agreement is terminated prior to the end of any Term under clause 18.1, then you agree you will be liable for both additional fees and charges described below:

- The cost of the services performed by us for you (calculated on an hourly fee for services basis in accordance with our standard rates) plus GST less the amount which you have paid us under this Agreement during the current Term, calculated at the date of termination. For the avoidance of doubt, we will not be liable to refund any amount if the calculation produces a negative result.
- An additional amount which is equivalent to 20% of the monthly fees which would have been payable but for the termination of this Agreement.

15.3 You acknowledge and agree that the above represents a reasonable pre-estimate of the loss suffered by us as a result of your early termination of this Agreement.

16 Third Party Suppliers

16.1 You acknowledge that we cannot be held responsible for any loss incurred by you because of faults and/or failures within a third party carrier's network infrastructure.

16.2 Where the Service includes the provision of an internet service or any of the wholesale transmission services, you will also abide by the relevant standard policies of usage published by that service provider as updated from time to time by them and as defined in table 1.3.

16.3 We reserve the right to pass on any increases in charges associated with our Services to you where we rely on a third party for the provision of the Services and that third party increases its price to us. We will give you reasonable notice of the change.

16.4 You acknowledge and agree to abide by the terms and conditions applicable to third party goods or services provided to you by us, and you acknowledge that these terms and conditions may change from time to time.

17 Dispute Resolution

17.1 Any dispute relating to this Agreement is to be referred in writing to the relevant contract manager of you and us who has authority to settle the dispute.

17.2 If the matter is not resolved by negotiation within 30 days of receipt of the written notice, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through mediation by a mediator appointed by the President of the Law Institute of Victoria.

18 Termination

18.1 Either party may terminate this Agreement for any reason during any Renewal Term on written notice 90 days prior to the date of termination and payment of the fees referred to in clause 15 (if applicable).

18.2 We may terminate this Agreement immediately upon notice to you if:

- you have ceased to operate in the ordinary course;
- made an assignment for the benefit of creditors or similar disposition of your assets;
- become the subject of any bankruptcy, re-organisation, liquidation, dissolution or similar proceeding;
- we notify you of a breach of this Agreement and you fail to remedy the breach within 28 days.

18.3 On termination, you and we acknowledge that:

- your right to use the Services ceases immediately and you must inform us of the specific location of any Equipment held by you which is owned by us and, you permit us, or will procure permission for us to enter any location during normal business hours for the purpose of removing any of the Equipment
- you will not assert any lien over the Equipment and that you have no entitlement to a lien.
- we will return any property owned by us within a reasonable time frame on written request.
- Termination will not affect any rights or liabilities which have already accrued to either party, and nor will affect any provision which is expressly or by implication intended to operate after termination.

19 Failure to Act

Our failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in this Agreement, or failure to exercise any right or remedy available under this Agreement or at law, or our failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under this Agreement shall not constitute a waiver of any subsequent default or a waiver of our right to demand timely payment of future obligations or strict compliance with this Agreement.

20 Assignment

20.1 We may assign our rights and novate our obligations under this Agreement by written notice to you without your prior written consent. You must sign any document to give effect to the assignment or novation when asked.

20.2 You must not assign your rights or novate your obligations under this Agreement without our prior written consent.

21 Force Majeure

We shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Services impossible, where all money due to shall be paid immediately and, unless prohibited by law, we may elect to terminate the Agreement.

22 Legal Construction

22.1 These Terms shall be governed by and interpreted according to the laws of Victoria and the parties consent and submit to the jurisdiction of the Courts of Victoria.

22.2 Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Agreement shall continue in full force and effect.

22.3 We acknowledge that we will ensure that we are in compliance with all the legal and security requirements in accordance to the laws of Victoria under the Privacy and Data Protection Act 2014

22.3 The following clauses survive termination: 2 (Payment Terms), 5 (HaaS), 6 (IaaS), 9 (Intellectual Property), 10 (Indemnity), 11 (Confidentiality), 13 (Limitation of Liability), 14(Warranties), 15 (Early Termination Charges) 16 (Third Party Suppliers).