

INFOTRUST PROFESSIONAL SERVICES AGREEMENT

THIS INFOTRUST PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) dated the **1st day of March 2023** (the “**Commencement Date**”) between **InfoSurety Pty Ltd trading as “InfoTrust”** (ABN) 861 690 305 68 whose principal office is at Level 13, 50 Margaret Street, Sydney, NSW 2000 Australia (“**InfoTrust**”) and **[Company Name]** a company with registered number **[Abn Number]** whose principal office is at **[Company Address]** (the “**Customer**”) each a “**Party**,” and together, “the **Parties**.”

Background

- A. Customer wishes to appoint InfoTrust as a provider of IT services.
- B. InfoTrust has agreed to provide the Services to the 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 directly with Customer.

1. Interpretation

- 1.1. In this Agreement:
 - 1.1.1. references to any law or regulation includes any change, consolidation, replacement, re-enactment or extension of the law or regulation
 - 1.1.2. reference to a document is a reference to the document as from time to time supplemented or varied
 - 1.1.3. references to Clauses, Schedules and/or parties are to Clauses of and Schedules and/or parties to this Agreement, respectively
 - 1.1.4. 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.
- 3.2. Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that InfoTrust may, sub-contract the Services to a third party or an associated entity of InfoTrust, at its election in its sole and absolute discretion,.

4. Amount of the charges

- 4.1. Subject to InfoTrust providing the Services under an SOW, or as otherwise expressly provided under this Agreement, 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 upfront by Customer prior to Services being delivered.
- 5.2. Where Charges relate to InfoTrust’s purchase of goods connected with the Services, InfoTrust is not obliged to make such purchases until such time as the relevant Charges are paid by the Customer and any delay caused by late payment is at the cost and risk of Customer only.
- 5.3. In connection with ongoing Services, the Customer acknowledges that 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 14 days of the date of the invoice issued by InfoTrust.
- 5.6. Where any amounts due by the Customer 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

- 9.1. Each of the Customer and InfoTrust represents and warrants to the other that:
 - 9.1.1. it is duly incorporated in accordance with the laws of its jurisdiction, validly exists 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
 - 9.1.2. it has capacity unconditionally to sign and deliver and comply with its obligations under this document
 - 9.1.3. it is not insolvent, and
 - 9.1.4. 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.
 - 9.1.5. 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 (in AUD) 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, at InfoTrust's election and sole discretion; 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, at InfoTrusts election and sole discretion.
- 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**
- 12.1. 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**
- 13.1. 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 of any of the events described in this clause in any jurisdiction.
- 14.2. Without limiting the effect of clause 16.1, InfoTrust is entitled to terminate this Agreement with immediate effect in the event of:-(a) a breach by the Customer of its payment obligations under this Agreement;
- 14.2.1. a breach of this Agreement by the Customer, which is incapable of remedy; or
- 14.2.2. a breach of this Agreement which, if capable of remedy, has not been remedied by the Customer within a period of fourteen (14) days after InfoSurety Services provides written notice to the Customer of such breach (or non-compliance with terms) of this Agreement.
- 14.3. 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. The Customer acknowledges and agrees that, at all times during the term of this Agreement and for the duration of the Restraint Period, the Customer shall not, without InfoTrust's prior written consent:-
- 15.1.1. approach, solicit, encourage or entice away or attempt to approach, solicit, encourage or entice away any person who is an employee, contractor or agent of the Company, or who was an employee, contractor or agent of the Company during the twelve (12) month period immediately preceding the date of expiry or termination of this Agreement (whichever is the earlier). 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 and an SOW, the provisions of 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.
- 15.15 The Customer may not assign its rights and obligations under this Agreement without the prior written consent of InfoTrust (which it may withhold in its sole and absolute discretion). InfoTrust may assign its rights and obligations under this Agreement without the consent of the Customer.
16. **Assumptions and Constraints**
- 16.1. A SOW will proceed with the following identified assumptions. Additional assumptions and constraints may be listed in a SOW. Any further assumptions or constraints that are identified as the SOW progresses will be subject to a change control and an impact analysis, which may affect the cost and timescales of the SOW. Where these changes were not reasonably identifiable by InfoTrust then the customer will bear any costs. InfoTrust requires that:
- 16.1.1. There is full disclosure of all relevant information by Customer.
- 16.1.2. Stakeholders will be available to InfoTrust for workshops, as required.
- 16.1.3. Customer can receive signoff of the SOW and other documents in a timely manner.
- 16.1.4. Where required, remote access connectivity and appropriate authentication to the Customer environment can be provided to InfoTrust in a timely manner.
- 16.1.5. Requested documentation and information will be provided to InfoTrust within a timely manner.
- 16.1.6. Any decisions from parallel projects that could impact the SOW will be communicated to InfoTrust without delay.
- 16.1.7. Customer will communicate to InfoTrust, at the kick-off meeting, any risks or dependencies that may affect the engagement.
- 16.1.8. Only the works specified in the SOW document form will be completed. Any additions to the scope or the proceeding implementation will be subject to the Change Order which may incur additional cost.
- 16.1.9. Where required, suitably qualified staff of Customer will be available throughout the engagement for the purposes of requirements gathering and knowledge transfer.
- 16.1.10. Relevant environment access is granted to InfoTrust, including the ability to access the internet
- 16.1.11. Any timescales or plans presented in a SOW assume that Customer provides any required information and fulfils its other obligations in a timely manner. If Customer fails to meet these obligations, InfoTrust may adjust the timeline or costs with notice to Customer to address the delays or failures to meet obligations.
- 16.1.12. Customer will arrange and co-ordinate all meetings and handover workshops, ensuring appropriate staff are present
- 16.1.13. All work is to be conducted during normal Business Hours (9:00am to 5:30pm, Monday to Friday, excluding local Public Holidays), unless otherwise stated.
- 16.1.14. All documents will be deemed accepted unless written changes or modifications are received from Customer within 5 working days of receipt of the documents.
- 16.1.15. All InfoTrust deliverables will undergo one review process only. If any additional reviews are required InfoTrust reserves the right to raise a Change Order to recover any additional costs that InfoTrust may incur as a result of the additional review.
17. **Change Management**
- 17.1. The scope of a SOW will be reviewed and signed off by both authorised personnel from both parties. Any changes to the scope will be subjected to the following Change Management process and shall be reflected via a Change Order addendum.
- 17.2. Change Management Process
- 17.2.1. The following process is required for addressing and implementing any changes to the scope of a SOW. A Change Management committee will be consulted during initiation of the engagement with representatives from InfoTrust and Customer if deemed necessary by both parties. This committee will be authorised personnel for addressing all issues / changes. Any stakeholder can request for changes through this committee.
- 17.3. Definition of
- 17.4. Requesting Changes
- 17.4.1. The change initiator will complete a Change Order and submit it to the Change Management committee for consideration. The Change Management committee will assess the request in relation to the SOW scope and will accordingly either 1. Accept the Change Order for implementation; or 2. Deny the request and close it.
18. **Definitions**
- 18.1. In this Agreement the following expressions have the meanings stated:
- 18.2. **Act** means the *Privacy Act 1988* (Cth).
- 18.3. **Agreement** means this written agreement, including the Schedules and any SOW.
- 18.4. **Change** means any of the following:
- 18.4.1. Implementing a task which was not identified in the scope of work
- 18.4.2. A modification of a task identified in the scope of the work
- 18.4.3. Changes to the IT environment (different versions of software, hardware tools, etc.)
- 18.4.4. Any changes to input baseline that impacts the schedule and cost
- 18.4.5. Any changes to approved artefacts that impacts the schedule and cost
- 18.4.6. New product releases or technology developments during project fulfilment.
- 18.5. **Charges** means the charges to be paid by Customer for the Services calculated in accordance with an SOW.
- 18.6. **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.
- 18.7. **Commencement Date** means the date of this document.
- 18.8. **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.
- 18.9. **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 of an SOW.
- 18.10. **GST** means a good and services tax, value added tax, consumption tax or services tax.
- 18.11. **Restraint Period** means a period of twelve (12) months from the date of expiry or termination of this Agreement (whichever is the earlier)
- 18.12. **Services** means the services specified in a SOW to be provided by InfoTrust under this Agreement.
- 18.13. **SOW** means a statement of work which sets out the Services per project between Customer and InfoTrust.

Signed for and on behalf of:

InfoTrust

[Company Name]

By

By

Authorised signature

Authorised signature

Name (type or print)

Name (type or print)

Title

Title

On

On

Date

Date

Schedule 1

If, at any time at or prior to the proposed start date specified in a relevant SOW, the Customer submits a written *Cancellation/Delay Request* to InfoTrust and InfoTrust accepts such request, the following charges will apply and be payable by the Customer:-

Timing of Cancellation/Delay Request	Fees and Charges Payable by Customer
More than 30 days prior to the applicable agreed scheduled start date specified in a relevant SOW.	A fee in the amount of 10% of the total Fees quoted by InfoTrust in respect of the relevant agreed SOW will be payable by the Customer.
Between 30 days and 15 days (inclusive) prior to the applicable agreed scheduled start date specified in a relevant SOW.	A fee in the amount of 25% of the total Fees quoted by InfoTrust in respect of the relevant agreed SOW will be payable by the Customer.
Between 14 days and 8 days (inclusive) prior to the applicable agreed scheduled start date specified in a relevant SOW.	A fee in the amount of 50% of the total Fees quoted by InfoTrust in respect of the relevant agreed SOW will be payable by the Customer.
Between 7 days and 72 hours (inclusive) prior to the applicable agreed scheduled start date specified in a relevant SOW.	A fee in the amount of 75% of the total Fees quoted by InfoTrust in respect of the relevant agreed SOW will be payable by the Customer.
Between 71 hours and up to the applicable agreed scheduled start date specified in a relevant SOW.	A fee in the amount of 100% of the total Fees quoted by InfoTrust in respect of the relevant agreed SOW will be payable by the Customer.

And the Customer acknowledges and agrees that each of the fees specified in the table above represent a fair and genuine pre-estimate of the damages, costs or expenses incurred by InfoTrust as a result of such *Cancellation/Delay Request*.