



HOSTING TERMS AND CONDITIONS

This document sets out the Terms and Conditions on which Infinitem Technologies Pty Ltd [ABN 80 615 516 759] (“Infinitem Technologies”) provides Services to you, the Customer. You accept these Terms and Conditions when you purchase a Hosting Service through Infinitem Technologies. When you have accepted these Terms and Conditions, they become a legal agreement between you and Infinitem Technologies Pty Ltd. Hosting Terms and Conditions is to be read in conjunction with the Infinitem Technologies Master Services Agreement (MSA). Please read it carefully. Once you have accepted these Terms and Conditions, you can always access and review them via the Infinitem Technologies Website, its contents are owned and operated by Infinitem Technologies Pty Limited (“Infinitem Technologies”).

1. Services

1.1 These Terms and Conditions cover all Hosted Services

1.2 Hosted Services: includes:

- 1.2.1** Internet connectivity services (“Bandwidth”) used in your relevant datacentre
- 1.2.2** Use of equipment including the server Physical or Virtual and other equipment used in internet connectivity services (“Hardware”), and
- 1.2.3** licensing of the associated operating system and web server applications (“Software”),
- 1.2.4** Virtual Server(s)

1.3 Hosted Service Levels: Infinitem Technologies will provide the Services in accordance with the Service Level Agreement applicable to the service quote accepted by Customer –
Hosted Server SLA – Service Level Agreement
Hosted Server SLG – Service Level Guarantee

2. Warranties

2.1 Sole Warranties: Infinitem Technologies warrants that the Services will be supplied with due care and skill in accordance with the applicable Service Level Agreement and that any material supplied in connection with the Service is reasonably fit for the purposes for which it is supplied.

2.2 Exclusion of All Other Warranties: With the exception of the warranties set out in clause 2.1 and to the full extent permitted by law, all other express or implied warranties, representations, terms and conditions regarding Services, Hardware and/or Software and their use or regarding the Agreement are hereby expressly excluded.

2.3 Limitation of Liability: Infinitem Technologies’ liability for breach of the warranties set out in clause 2.1 is limited at its option to the resupply of Services, or payment of the cost of having the Services supplied again. In no event shall Infinitem Technologies be liable for any loss of data, loss of profits, cost of cover, or any other special, incidental, consequential, indirect or punitive damages, however caused and regardless of theory or liability, notwithstanding that Infinitem Technologies has been made aware or advised of the possibility of such damages.

3. Proprietary Rights in Hardware and Software





3.1 Customer shall have no right, title, or interest of any kind whatsoever in the Software, Hardware, documentation, or any copyrights, patents or trademarks, embodied or used in connection therewith, except for the limited license to use the Hardware and Software provided in this Agreement.

4. Maintenance of Hardware and Network

4.1 Infinitem Technologies Hardware: Infinitem Technologies will maintain and support Hardware in accordance with best industry practice or, where applicable, vendor specifications.

4.2 Scheduled Maintenance: Infinitem Technologies will perform all regularly scheduled maintenance to maintain Hardware and the Infinitem Technologies network outside Business Hours. Infinitem Technologies will give Customers notice by email at least 48 hours in advance if scheduled maintenance requires interruption to Services for more than 30 minutes.

4.3 Replacement of Hardware: Infinitem Technologies may substitute, change or modify the Hardware at any time, but shall not thereby substantially alter the technical parameters of the Services without the prior approval of Customer unless the effect of the substitution, change or modification is to enhance the capacity or specifications of the Hardware.

5. Software

5.1 Operating System and Web Server Software License: During the Term Infinitem Technologies grants the Customer a non-transferable, non-exclusive license to use and install the Software specified with the service. Infinitem Technologies warrants that it has full right, title and interest in the Software to grant sub-licenses by virtue of a license granted by the vendor of the Software ("Vendor License") to Infinitem Technologies to use and sub-license the Software. Infinitem Technologies does not warrant third party Vendor Software in any way whatsoever, but undertakes to pass onto Customer the benefit of all warranties and indemnities relating to use of the Software under the Vendor License.

5.2 Software License Restrictions: Customer agrees that it will not, directly or indirectly (and it will not allow others to):

- 5.2.1** copy the Software, except as necessary to install on Hardware and for internal, archival purposes. In the event the Customer makes authorized copies of the Software, Customer shall reproduce all proprietary notices on such copies;
- 5.2.2** sell, rent, lease, license, transfer, give possession of, or sub-license the Software to others, other than as permitted in the Vendor License;
- 5.2.3** write or develop any derivative or other software programs, based, in whole or in part, upon the Software or any Confidential Information.

5.3 Exclusions: Customer acknowledges that breach of clause 7.2 may result in invalidation of warranties relating to Software, including the benefit of third party Vendor warranties.

5.4 Software Provided by Customer: Where Customer provides or uses other software on or in the Hosted Environment, Customer warrants that it has full right title and interest under a valid license to use that software and to grant a valid sub-license to Infinitem Technologies to install and run that software during the Term solely in connection with providing Services under this Agreement.





5.5 Termination: pursuant to clause's 12, Customer will immediately cease using and destroy any Software which Infinitem Technologies has granted a non-transferable, non-exclusive license to use.

6. Backup of Data

6.1 In relation to Hosted servers Infinitem Technologies retains daily Disaster Recovery archives of Customers servers for a period of 14 days, Additional archive retention can be negotiated, and will be listed in the service quote. In the event of equipment failure or data corruption, we will provide assistance in restoring these servers from archives, In the event of corruption of all of our archives, or in the event that an old archive is used to restore data, the Customer must be prepared to upload their data to their Virtual Server Environment. At all times the Customer must maintain their own recent copies of their data to their virtual servers, separate to those at Infinitem Technologies' facilities, Infinitem Technologies will not be liable for incomplete, out of date, corrupt or otherwise deficient client data recovered from Infinitem Technologies archives.

6.2 Hosted Exchange Business Email: This is not an archival service. You are solely responsible for maintaining independent back-up copies of your emails. Infinitem Technologies performs daily disaster recovery backups on the entire Hosted Exchange Business Email Platform for restoration in the event of a disaster, individual mailboxes cannot be restored because of this backup process. Infinitem Technologies expressly disclaims any liability or responsibility for any loss, damage or destruction of your emails, contacts, distribution lists, or any other content.

6.3 Infinitem Technologies will work with the customer to implement a means of offsite backups for Customer data external to Infinitem Technologies Infrastructure in relation to clause 6.1 and 6.2, if the Customer declines options given by Infinitem Technologies, Infinitem Technologies will not be liable for incomplete, out of date, corrupt or otherwise deficient client data recovered from Infinitem Technologies archives.

6.4 In the event that the offsite backup is incomplete, out of date, corrupt or otherwise deficient Infinitem Technologies expressly disclaims any liability or responsibility for any loss, damage or destruction of your data.

6.5 Restoration Fees: Infinitem Technologies hourly rate per 30 minute period will apply for any requested restoration of individual websites, virtual server's or databases. Restoration of Servers will be completed during business hours as prescribed in the definitions; Unless the client has a Full Service Contract signed with Infinitem Technologies.

6.6 Data Extraction Fee, Infinitem Technologies reserves the right to charge customer per TB, or part thereof, for data to be copied from Infinitem Technologies hosting infrastructure.

7. Acceptable Use Policy and Use of Services

7.1 Acceptable Use Policy: Customer agrees and acknowledges that it has read Infinitem Technologies' Acceptable Use Policy published on the Infinitem Technologies Website at: <http://www.infinitem.net.au/legal/> and agrees and undertakes that it will at all times observe and comply with that Acceptable Use Policy, as may be amended from time to time by publishing of amendments on the Infinitem Technologies Website.





- 7.2 Sole Responsibility:** Customer acknowledges and agrees that it is solely responsible for all information, material, content or data (“Content”) of any postings, data or transmissions utilising the Services or any other use of the Services by Customer or User.
- 7.3 Removal of Offending Content:** Customer acknowledges that Infinitem Technologies has the right to remove Content in accordance with the terms of the Acceptable Use Policy, including without limitation and without notice to Customer any Content deemed by it in its sole opinion to breach or offend its Acceptable Use Policy, or to suspend Services or disconnect or deny access to Services if in its sole opinion it deems Content to breach or offend its Acceptable Use Policies.
- 7.4 Excessive Use:** Customer covenants and agrees that it will at all times observe, comply with and not breach usage limitations, including bandwidth, traffic (inbound, outbound and aggregated), data storage and backup, server resources and mailboxes, as listed in the service quote accepted by Customer. Customer also agrees and covenants that it will not use the Services in an excessive or unusual way.
- 7.5 Suspension:** Customer acknowledges that Infinitem Technologies is entitled to suspend or cancel Services, permanently or temporarily, if Customer breaches clause 7.4, then 30 days written notice will be given to customer in writing before suspending or cancelling the services. And that if at any time Infinitem Technologies does suspend or cancel the Services, the Customer remains liable for any charges incurred:
- 7.5.1** Through excessive or unusual usage
- 7.5.2** Where the suspension is temporary, during such suspension.
- 7.6 Indemnity:** Customer agrees to hold harmless and indemnify Infinitem Technologies against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through Customer) which Infinitem Technologies may suffer, directly or indirectly, resulting from or arising out of Customer’s or User’s breach of the Acceptable Use Policy or the misuse or abuse of the Services in any way whatsoever by Customer or any User.
- 8. Release of Information to Authorised Agencies**
- 8.1 Monitoring Use of Services.** In order to comply with, and subject to, any applicable laws, including without limitation the Telecommunications Act 1997 and the Telecommunications (Interception) Act 1979, Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015 Infinitem Technologies may at any time:
- 8.1.1** When required by a warrant issued by a Regulatory Agency or an authorised law enforcement agency or court, intercept or monitor Services, or enable another person authorised by a warrant issued by a Regulatory Agency or an authorised law enforcement agency or court, to intercept or monitor Services, including data hosted on or being transmitted through Services;
- 8.1.2** Monitor and/or examine use of Services, including email, records and other data in the course of installation, connection or routine maintenance of the Services, but only to the extent permitted by legislation;
- 8.1.3** Suspend Services.
- 8.1.4** Release information obtained by any of these actions to any Regulatory Agency.
- 8.2 Indemnity.** Customer agrees to and shall hold harmless and indemnify Infinitem Technologies against any loss, expenses, liability, damages or claim made against it by any





party whatsoever (including without limitation Customer, a User or any party claiming through Customer or a User) which Infinitem Technologies may suffer, directly or indirectly, resulting from or arising out of any actions taken by it pursuant to clause 10.1.

9. Term and Termination

9.1 Term: This Agreement shall be effective for the term ("Term") as defined in the service quote accepted by Customer. Unless Customer gives at least 30 days' notice of termination prior to the expiration of the Term, This Agreement shall automatically be extended for a further 12 months. Which further period shall be referred to as "the Term" or "Subsequent Term", and where appropriate any reference in this Agreement to Term shall be deemed to include a reference to a Subsequent Term.

9.2 Mutual Termination: This Agreement shall be terminated prior to the expiration of the Term in the following circumstances:

9.2.1 either party gives written notice of a material breach of this Agreement, and the breach is not remedied within 30 days after receipt of the notice; or

9.2.2 if either party goes into administration or liquidation either compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets or if either party makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, and in either event the other Party gives notice that it elects to terminate the Agreement which notice shall be effective immediately.

9.3 Other Termination: Infinitem Technologies may terminate this Agreement by giving reasonable notice to the Customer prior to the expiration of the Term set out in the Service if:

9.3.1 a Regulatory Authority directs it to do so; or

9.3.2 a Supplier terminates an agreement to supply services to Infinitem Technologies, and as a consequence Infinitem Technologies is unable to supply Service(s) to Customer through an alternative Supplier on reasonable commercial terms. If no suitable alternative supplier can be identified Customer must be notified in writing with at least 30 days' notice.

9.4 During the term of the contract 3 months' written notice is required by either party to terminate the contract.

9.5 If Customer terminates the contract for reasons other than in clause 9.2 the balance of the total minimum cost less the amount already paid on the contract shall become immediately due and Customer will immediately pay that invoice and any other outstanding invoices.

10. Consequences of Termination

10.1 If Customer has made a payment for services in advance, Infinitem Technologies will apply the balance of any such payment remaining (calculated on a pro rata basis) against any amounts due and payable by the Customer, but in no other case shall Customer be entitled to a refund of such payment.

10.2 In the event of termination of the Agreement prior to the expiration of the Term under clause 9.2, and on the expiration of the Term, Infinitem Technologies will bill Customer for all services up to date of termination, and Customer will immediately pay that invoice and any other outstanding invoices.





10.3 On the expiration of the Term or on termination of the Agreement pursuant to clause's, 9, Infinitum Technologies will immediately cancel Services, and Customer will immediately cease using Services and any Software and Hardware provided under this Agreement.

10.4 On the expiration of the Term or on termination of the Agreement pursuant to clause's, 9, Infinitum Technologies will retain copies of Customer data for a period equivalent to the backup retention as defined in clause 6.1 or in the service quote whichever is greatest at which point this data will automatically be deleted and become irretrievable.

11. Suspension of Services

11.1 Events of Suspension. Infinitum Technologies may, in its sole discretion and without derogating from its right to terminate this Agreement pursuant to clause 9, at any time suspend, restrict or disconnect the supply of Services to the Customer and/or any of its customers or Users on the occurrence of any of the following events:

11.1.1 Customer fails to pay any outstanding invoices within 7 days of written demand by Infinitum Technologies;

11.1.2 Customer breaches Infinitum Technologies' Acceptable Use Policy and fails to rectify that breach immediately on written demand by Infinitum Technologies;

11.1.3 Infinitum Technologies is directed by any Regulatory Agency and/or authorised law enforcement agency to do so;

11.1.4 During any technical failure, modification or maintenance of the Service, provided that Infinitum Technologies will use its reasonable endeavours to ensure that the Service are resumed as soon as practicable; and/or

11.1.5 Infinitum Technologies deems it necessary for purposes of scheduled or unscheduled maintenance. Customer will be given minimum of 48 hours' notice of schedule maintenance. In the event of unscheduled maintenance, where possible, the Customer will be given 24 hours written and or verbal notification.

11.2 Consequences of Suspension. Infinitum Technologies will not reconnect or re-activate Services suspended pursuant to clause 11.1.1, 11.1.2 and 11.1.3 until Customer has paid any re-connection or re-activation fee then in effect for each Service. Customer will remain liable under this Agreement for all payments falling due within the period for suspension of Services, including without limitation for all fees accruing and accrued during the suspension.

11.3 Indemnity. Customer agrees to and shall hold harmless and indemnify Infinitum Technologies against any loss, expenses, liability, damages or claim made against it by any party whatsoever (including without limitation Customer, a User or any party claiming through Customer) which Infinitum Technologies may suffer, directly or indirectly, resulting from or arising out of any actions taken by it pursuant to clause 11.1.

12. Amendment of these Terms and Conditions

12.1 Amendment of Agreement: This Agreement may be amended or varied as follows:

12.1.1 If this Agreement is automatically extended pursuant to clause 9.1, Infinitum Technologies may, during the Subsequent Term or Terms, amend or vary the Fees charged for Services and terms relating to the operation of Services, by posting the amendments or variations on the Infinitum Technologies website, and notifying Customer in writing. Such amendment or variation shall become effective 30 days after





notification, and the Customer shall be deemed to have accepted such amendment if it continues to use the Services after the amendments become effective.

12.1.2 Infinitum Technologies may from time to time amend or vary these Terms and Conditions, its Acceptable Usage Policy and its Privacy Policy by publishing such amendments or variations on the Infinitum Technologies Website, and notifying in writing to Customer. These amendments and/or variations shall take effect 30 days from Customer notification.

13. Definitions

13.1 Acceptable Use Policy means the policy set out at URL <http://www.infinitum.net.au/legal/> which defines acceptable and unacceptable use of the Services by the Customer.

13.2 Infinitum Technologies means Infinitum Technologies Pty Limited.

13.3 Infinitum Technologies Website means the website located at the URL, <http://www.infinitum.net.au>

13.4 Infinitum Technologies Customer Portal means the website located at the URL, <https://ww6.autotask.net/ClientPortal/Login.aspx?ci=701796>.

13.5 Business Hours means the hours between 8.30 am and 5.00 pm on normal business days in the State of Western Australia.

13.6 Customer means the end user of Services to whom Infinitum Technologies sell Services, or to whom it's authorised Resellers resell Services.

13.7 Privacy Law means and includes Information Privacy Act 2009, and any other law, statute or code in Australia that regulates the dissemination and use of information about or concerning an individual person or corporation.

13.8 Provisioning in relation to services provided under the Plan selected by Customer means Infinitum Technologies doing everything necessary to set up and manage those services, and includes configuring and programming its equipment, networks and databases to enable all options selected by Customer.

13.9 Regulatory Authority means and includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman, the Internet Industry Association, the Asia Pacific Network Information Centre, authorised domain name registrars, and any other competent government or statutory body or authority having jurisdiction over Infinitum Technologies.

13.10 Service or Services means the service or Services set out in the service quote accepted by Customer and any related Hardware, Software and additional services which Infinitum Technologies supplies in connection with the Service or Services.

13.11 Service Level Agreement means the agreement set out at the URL <http://www.infinitum.net.au/legal/>





- 13.12** Supplier means any supplier of goods or services (including without limitation interconnection services) used directly or indirectly by Infinitum Technologies to supply Services under this Agreement.
- 13.13** Term means the period of the service quote accepted by Customer and Subsequent Term means any further period for which this Agreement is automatically extended pursuant to clause 9.1.
- 13.14** Usage Charges means any charges for services which are measured, calculated or determined by reference to use of the Services by Customer.
- 13.15** User means any person or entity authorised by Customer to access and/or use the Services, and includes any person accessing any Customer website.

