



## MANAGED SERVICE AGREEMENT 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 enter into a Managed Service agreement with Infinitem Technologies. When you have accepted these Terms and Conditions, they become a legal agreement between you and Infinitem Technologies Pty Ltd. These Terms and Conditions are 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. Exclusions

- 1.1** The following items are excluded from the Managed Service Agreement and will be invoiced separately at the current project rate. Unless expressly specified to the contrary in the Quotation or in this Agreement for a Managed Service, the Managed Services do not include the following (or services relating to any of the following):
- 1.1.1** Office relocations, building and configuring of new servers (physical or virtual), new software package installations, and devices out of manufactures warranty.
  - 1.1.2** Labour for onsite visits outside of the 30km radius from the Geraldton or Dongara GPO.
  - 1.1.3** Where onsite visits are required outside of the 30km radius from the Geraldton or Dongara GPO, travel time, travel costs, materials, accommodation, food and expenses are payable by the Customer.
  - 1.1.4** electrical, air conditioning, building or environmental work external to the Managed Components.
  - 1.1.5** repair of damage caused by:
    - 1.1.5.1** the operation of the Maintained Components by a person not authorised by the Customer.
    - 1.1.5.2** the operation of the Maintained Components other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the manufacturer or Supplier.
    - 1.1.5.3** the operation of the Maintained Components by a person not authorised by Infinitem Technologies
  - 1.1.6** re-installing moving or removing the Managed Components or accessories, supplies or other items associated with the Managed Components.
  - 1.1.7** maintenance which is determined by the Supplier not to be related to the Managed Components.
  - 1.1.8** rectification of defects, errors or computer viruses in any software, hardware or equipment, or repairs, support or maintenance relating to those things.
  - 1.1.9** rectification of errors or failures caused by failure of hardware, power, air-conditioning or other environmental failure.

### 2. Reviews

- 2.1** Quarterly reviews to take into account user/workstation changes which may result in an increase or decrease on the monthly contracted rate with the exception of Microsoft SPLA, Webroot antivirus and any other software licensing which is adjusted monthly based on actual usage. Pursuant to clauses 14 and 15.





### **3. After Hours Support**

- 3.1** If After Hours support is included in your agreement this is restricted to business critical outages such as, Server down, Line of business application down, Power outages planned or unplanned.
- 3.2** Exclusions: the following items and events are excluded from After Hours Support. If work is required this will be billed at the current project rate.
- 3.2.1** Workstations, Printers, Personal Computers, Mobile phones and tablets.
- 3.3** Refer to Infinitem Technologies “Infinitem Technologies Managed Service Agreement SLA” for service levels relating to afterhours support. This document can be found at <http://www.infinitem.net.au/legal/>

### **4. Onsite service**

- 4.1** Onsite service is at the discretion of Infinitem Technologies, Initial problem resolution will be via remote and phone support where practical.
- 4.2** The Customer shall receive annually a minimum of four (4) (scheduled approximately quarterly) maintenance onsite visits as part of services provided by Infinitem Technologies. Scheduled onsite visits do not accrue from year to year. Infinitem Technologies shall schedule these visits with the Customer within 7 days of the proposed onsite visit. Any additional call outs in excess of the scheduled onsite visits shall be quoted and provided to the Customer prior to any work being performed or undertaken or any onsite visits arranged.
- 4.3** Where a scheduled onsite visit is agreed to as part of the Managed Service agreement the Customer agrees to notify in advance (minimum of 1 Business Day) of the visit any work requested so as to allow Infinitem Technologies to allocate the required technicians, stock and time.

### **5. Server Maintenance**

- 5.1** Monthly Maintenance includes, Antivirus program updates, Microsoft patch management. Server Disk space clean-up. Active Directory Management, Disaster recovery and backup test restore of critical data, Maintain of Disaster Recovery System. Excluding hardware or media.
- 5.2** Quarterly Maintenance includes, Server firmware updates, Router and Switch firmware updates.
- 5.3** Customer agrees to allow Infinitem Technologies to perform reasonable maintenance as necessary or required as per this agreement at a time determined by Infinitem Technologies. Infinitem Technologies shall notify the Customer of any planned or scheduled maintenance or outages and attempt to schedule any outages during the arranged onsite visits under clause 4 above.
- 5.4** If maintenance cannot be completed due to the Customer not allowing access to be performed or if the device is inaccessible for maintenance to be carried out this does not relieve the Customer of the obligation to pay the service fee.





## **6. Monitoring**

**6.1** Infinitum Technologies operates a monitoring service, which can monitor core servers, workstations, and services. This service reports 24 hours a day, 7 days a week.

**6.2** Response time to Critical alerts during business hours is 30 minutes.

**6.3** Any alert conditions raised outside of these hours will be actioned the following business day.

## **7. Third Party Vendors**

**7.1** Infinitum Technologies will engage and communicate with software of hardware vendors as required to complete any work associated with this agreement.

**7.2** Infinitum Technologies Is not liable for any charges raised from Third party suppliers or vendors in the course of this communication.

## **8. Warranties**

**8.1** Sole Warranties: Infinitum Technologies warrants that the services will be supplied with due care and skill and that any material supplied in connection with the service is reasonably fit for the purposes for which it is supplied.

**8.2** Exclusion of All Other Warranties: With the exception of the warranties set out in clause 8.1 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.

**8.3** Limitation of Liability: Infinitum Technologies' liability for breach of the warranties set out in clause 8.1 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 Infinitum 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 Infinitum Technologies has been made aware or advised of the possibility of such damages.

## **9. Service Level Agreements**

**9.1** Service Level Agreements can be found in the following documents and form part of this agreement.

**9.1.1** "Infinitum Technologies Managed Service Agreement SLA" found at <http://www.infinitum.net.au/legal/>

## **10. CPI Increase**

**10.1** Infinitum Technologies reserves the right to increase any managed service fees on each consecutive 1 year anniversary of the contract in line with CPI increase release by the Australian Government.

## **11. Term and Termination**

**11.1** Term: This Agreement shall be effective for the term ("Term") as defined in the Managed Service Agreement accepted by the Customer. The Customer shall give not more than 60 days notice but not less than 30 days notice prior to the Expiration of the Term to Infinitum





Technologies that the Customer does not wish for the Term to be extended or to renegotiate the terms of this Agreement and the Services provided by Infinitum Technologies. If no notice is received from the Customer during this notice period 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.

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

**11.2.1** either party gives written notice of a material breach of this Agreement, and the breach is not remedied within 60 days after receipt of the notice; or

**11.2.2** 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.

**11.3 Other Termination:** Infinitum Technologies may terminate this Agreement by giving 30 days (or such other shorter time frame if beyond the control of Infinitum Technologies as may be applicable) notice to the Customer set out in the service agreement if:

**11.3.1** a Regulatory Authority directs it to do so; or

**11.3.2** a Supplier terminates an agreement to supply services to Infinitum Technologies, and as a consequence Infinitum Technologies is unable to supply service(s) to Customer through an alternative Supplier on reasonable commercial terms.

**11.4** During the term of the contract 3 month written notice is required by either party to terminate the contract.

**11.5** If Customer terminates the contract for reasons other than in clause 11.2 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.

## 12. Consequences of Termination

**12.1** If Customer has made a payment for services in advance, Infinitum 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.

**12.2** In the event of termination of the Agreement prior to the expiration of the Term under clause 11.2, and on the expiration of the Term, Infinitum Technologies will bill Customer for all services up to date of termination, and Customer will immediately pay that invoice and any other outstanding invoices.

**12.3** On the expiration of the Term or on termination of the Agreement pursuant to clause's, 11, Infinitum Technologies will immediately cancel services, and Customer will immediately cease using services and any Software and Hardware provided under this Agreement.

## 13. Suspension of services





**13.1** Events of Suspension. Infinitem Technologies may, in its sole discretion and without derogating from its right to terminate this Agreement pursuant to clause 11, 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:

**13.1.1** Customer fails to pay any outstanding invoices within 7 days of written demand by Infinitem Technologies;

**13.1.2** Customer breaches Infinitem Technologies' Acceptable Use Policy and fails to rectify that breach immediately on written demand by Infinitem Technologies;

**13.1.3** Infinitem Technologies is directed by any Regulatory Agency and/or authorised law enforcement agency to do so;

**13.1.4** During any technical failure, modification or maintenance of the service, provided that Infinitem Technologies will use its reasonable endeavours to ensure that the services are resumed as soon as practicable; and/or

**13.1.5** Infinitem Technologies deems it necessary for purposes of scheduled or unscheduled maintenance. Customer will be given minimum of 48 Hours' notice of schedule maintenance. Unscheduled maintenance, where possible Customer will be given 24 hours written and or verbal notification.

**13.2** Consequences of Suspension. Infinitem Technologies will not reconnect or re-activate services suspended pursuant to clause 13.1.1, 13.1.2 and 13.1.3 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.

**13.3** 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) which Infinitem Technologies may suffer, directly or indirectly, resulting from or arising out of any actions taken by it pursuant to clause 13.1.

#### **14. Microsoft service Provider Licensing Agreement (SPLA)**

**14.1** Microsoft SPLA licensing is reported on the 1st of each calendar month to Microsoft and is based on access that a given user has regardless of actual usage of the software in a given calendar month.

**14.2** Microsoft reserves the right to increase the monthly fees for any SPLA product and in such a case Infinitem Technologies reserves the right to pass any increases onto the customer.

#### **15. Webroot Licensing**

**15.1** Webroot licensing is reported on the 1st of each calendar month to Webroot and is based on user or device numbers depending on the product installed.

**15.2** Webroot reserves the right to increase the monthly fees for any product and in such a case Infinitem Technologies reserves the right to pass any increase onto the customer.

#### **16. Amendment of these Terms and Conditions**

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

**16.1.1** If this Agreement is automatically extended pursuant to clause 11.1, Infinitem 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.

- 16.1.2** 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. [www.infinitum.net.au/legal](http://www.infinitum.net.au/legal) and notifying in writing to Customer. These amendments and/or variations shall take effect 30 days from Customer notification.
- 16.1.3** If the Customer is unhappy about an amendment and the change materially affects the Customer and this Agreement with Infinitum Technologies, the Customer must within 30 days from the date of notification, notify Infinitum Technologies of such issue and Infinitum Technologies shall consider but not be obliged to make any specific changes or requests of the Customer, particularly if the change is as a result of a governing body or regulatory authority enforcing a change.
- 16.1.4** Infinitum Technologies shall not at any time alter the fee structure or its scope of Services provided to the Customer during the Term without consent of the Customer.

## 17. Definitions

- 17.1** 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.
- 17.2** Infinitum Technologies means Infinitum Technologies Pty Limited.
- 17.3** Infinitum Technologies Website means the website located at the URL, <http://www.infinitum.net.au>.
- 17.4** Infinitum Technologies Customer Portal means the website located at the URL, <https://ww6.autotask.net/ClientPortal/Login.aspx?ci=701796>.
- 17.5** Business Hours means the hours between 8.30 am and 5.00 pm on normal business days in the State of Western Australia.
- 17.6** Customer means the end user of services to whom Infinitum Technologies sell services, or to whom it's authorised Resellers resell services.
- 17.7** 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.
- 17.8** 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.
- 17.9** 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 Infinitem Technologies.

- 17.10** 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 Infinitem Technologies supplies in connection with the service or services.
- 17.11** Service Level Agreement means the agreement set out at the URL <http://www.infinitem.net.au/legal/>.
- 17.12** Supplier means any supplier of goods or services (including without limitation interconnection services) used directly or indirectly by Infinitem Technologies to supply services under this Agreement.
- 17.13** 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 11.1.
- 17.14** Usage Charges means any charges for services which are measured, calculated or determined by reference to use of the services by Customer.
- 17.15** User means any person or entity authorised by Customer to access and/or use the services, and includes any person accessing any Customer website.

