

## INFOTRACK CONNECT AGREEMENT

### Currency

This Version 1 of the InfoTrack Connect Agreement is current from 1 July 2023. © 2023 InfoTrack Pty Limited.

### Our Agreement

This InfoTrack Connect Agreement contains the terms and conditions that govern Supplier's access to and use of InfoTrack Connect for the distribution of its products and is made between InfoTrack Pty Limited (**InfoTrack**) and you or the entity you represent (**Supplier**), comprising the following parts:

- (a) the General Terms set out in Section 1 of this InfoTrack Connect Agreement; and
  - (b) (if relevant) the terms of any Supply Request entered into between the Parties,
- (together, this **Agreement**). If there is any inconsistency between the documents listed above, the documents listed later will prevail to the extent of the inconsistency.

This Agreement will commence on the earlier of:

- (a) when Supplier clicks an "I Accept" button or check box presented with this Agreement;
- (b) when Supplier first uses InfoTrack Connect;
- (c) when InfoTrack accepts a Supply Request in accordance with this Agreement,

(**Commencement Date**) and will continue until it expires or is terminated.

Supplier represents to InfoTrack that Supplier is lawfully able to enter into this Agreement and has legal authority to bind the organisation or entity it represents.

## TABLE OF CONTENTS

|  |    |
|--|----|
| 1. ON-BOARDING OF SUPPLIER PRODUCTS.....             | 3  |
| 2. ACCESS TO INFOTRACK CONNECT .....                 | 3  |
| 3. LICENCE OF SUPPLIER PRODUCTS .....                | 4  |
| 4. PROVISION OF SUPPLIER PRODUCTS.....               | 5  |
| 5. ON-PROVISION TO CUSTOMERS .....                   | 5  |
| 6. API TERMS.....                                    | 6  |
| 7. SERVICE VARIATIONS .....                          | 6  |
| 8. SUPPLIER DATA .....                               | 7  |
| 9. FEES AND INVOICES.....                            | 7  |
| 10. WARRANTIES, ACKNOWLEDGEMENTS AND EXCLUSIONS..... | 8  |
| 11. INDEMNITIES.....                                 | 8  |
| 12. LIMITATION OF LIABILITY .....                    | 8  |
| 13. SUSPENSION OF ACCESS.....                        | 9  |
| 14. TERMINATION.....                                 | 9  |
| 15. CONSEQUENCES OF TERMINATION.....                 | 9  |
| 16. FORCE MAJEURE .....                              | 10 |
| 17. INTELLECTUAL PROPERTY RIGHTS.....                | 10 |
| 18. CONFIDENTIALITY .....                            | 10 |
| 19. PRIVACY.....                                     | 11 |
| 20. DATA PROTECTION & SECURITY .....                 | 11 |
| 21. MODERN SLAVERY.....                              | 12 |
| 22. NOTICES.....                                     | 12 |
| 23. MISCELLANEOUS .....                              | 12 |
| 24. DEFINITIONS AND INTERPRETATION .....             | 13 |

## SECTION 1 GENERAL TERMS

### 1. ON-BOARDING OF SUPPLIER PRODUCTS

- 1.1 **Role of InfoTrack:** Subject to the terms of this Agreement, InfoTrack will provide to Supplier access to InfoTrack Connect and the InfoTrack API in order for Supplier to offer Supplier Products for purchase by Customers.
- 1.2 **Supply Requests:** If Supplier wishes for its products or services to be sold on InfoTrack Connect, it must send a Supply Request to InfoTrack setting out the details required in the supplier engagement form for Supply Requests and incorporating any Supplier Terms that Supplier wishes to apply to its products or services.
- 1.3 **Response to Supply Requests:** Following its receipt of a Supply Request, InfoTrack may:
- (a) notify Supplier that InfoTrack accepts the Supply Request, in which case clause 1.4 will apply;
  - (b) notify Supplier that InfoTrack requires further information in order to assess whether to accept the Supply Request, in which case Supplier must provide the required further information to InfoTrack within 5 Business Days otherwise the Supply Request will be deemed to have been rejected by InfoTrack;
  - (c) notify Supplier that InfoTrack will accept the Supply Request if Supplier makes adjustments to the Supply Request; or
  - (d) notify Supplier that InfoTrack rejects the Supply Request in whole or in part.
- 1.4 **Acceptance of Supply Request:** Within 5 Business Days after InfoTrack accepts a Supply Request:
- (a) InfoTrack will provide access to InfoTrack Connect and the InfoTrack APIs (where applicable) to Supplier if it has not already done so;
  - (b) Supplier will provide access to the Supplier API (where applicable) to InfoTrack if it has not already done so; and
  - (c) the parties will proceed to implement the APIs (where applicable) in accordance with clause 6.
- 1.5 **Uploading Supplier Products:** Subject to the implementation of the APIs (where applicable), the products or services detailed in an accepted Supply Request will be Supplier Products that may be offered to Customers on InfoTrack Connect, and Supplier must:
- (a) create point of sale forms within InfoTrack Connect using the InfoTrack Connect 'form builder';
  - (b) where applicable, either:
    - (i) upload to InfoTrack Connect files containing or a link to the relevant Supplier Products;
    - (ii) complete the integration with the InfoTrack APIs so the relevant Supplier Products are available via the Supplier APIs;
 in the format specified by InfoTrack;
  - (c) do all other things necessary or directed by InfoTrack to:
    - (i) fulfil orders made by Customer either via the InfoTrack APIs or InfoTrack Connect; and
    - (ii) enable Customers to order and receive the relevant Supplier Products from InfoTrack via InfoTrack Connect.

### 2. ACCESS TO INFOTRACK CONNECT

- 2.1 **Grant of Licence:** Subject to the restrictions set out in this clause 3, InfoTrack grants to Supplier a non-exclusive, non-sublicensable, non-transferable, revocable licence for Supplier (through Supplier's Permitted Users) to access and use InfoTrack Connect solely for the purpose of making Supplier Products available for purchase by Customers in accordance with the terms of this Agreement (**Permitted Purpose**).
- 2.2 **InfoTrack API Licence:** In addition to the licence granted in clause 2.1 and subject to clauses 2 and 6, during the Term, InfoTrack grants to Supplier a non-exclusive, non-transferable, non-sublicensable, revocable, limited licence to access and use the InfoTrack API solely for the limited purposes of:
- (a) configuring the Supplier API to make API Calls to the InfoTrack API for the purposes of enabling Customers to search for, order and access Supplier Products from InfoTrack Connect; and
  - (b) with respect to the InfoTrack test environment, testing and non-production use of the Supplier API in conjunction with the InfoTrack API.
- 2.3 **Duration of Licence:** Unless expressly stated otherwise in an accepted Supply Request, the licence granted by Supplier to InfoTrack under clauses 3.1 and 3.2 will immediately come to an end upon the first to occur of:
- (a) the expiry date specified in the Supply Request; and
  - (b) the expiry or termination of this Agreement.
- 2.4 **User Credentials:** InfoTrack will provide User Credentials to Supplier to allow access to InfoTrack Connect and the InfoTrack APIs (as applicable).
- 2.5 **Permitted Users:** Supplier agrees that:
- (a) it must restrict its access to the InfoTrack APIs and InfoTrack Connect to Supplier's Permitted Users; and
  - (b) Supplier is responsible and remains fully liable for the acts and omissions of Supplier's Permitted Users.
- 2.6 **Licence Restrictions:** Except as expressly permitted under this Agreement, Supplier must ensure that neither Supplier nor Supplier's Permitted Users will (nor attempt to):
- (a) **Permitted Purpose:** use the InfoTrack APIs and InfoTrack Connect (as applicable) for any purposes other than the Permitted Purpose;
  - (b) **No Third Party Benefit:** use InfoTrack Connect or InfoTrack APIs on behalf of or for the benefit of any third party;
  - (c) **User Credentials:** share any User Credentials or otherwise enable unlawful access to InfoTrack Connect or InfoTrack APIs by any other person (whether simultaneously or independent of Supplier);

- (d) **Disclaimers:** remove, alter or deface any registered or unregistered trademark, logo, copyright notices, disclaimers or other proprietary notice appearing on or in InfoTrack Connect or InfoTrack APIs;
- (e) **Trade Marks:** adversely affect or jeopardise the rights of InfoTrack to register any unregistered trade marks, whether or not an application for registration has been made;
- (f) **Misuse and Damage:** interfere, damage, alter, misuse or gain unauthorised access to the InfoTrack Environment or InfoTrack Materials or otherwise interfere with the ability of any other user to use InfoTrack Connect or InfoTrack APIs;
- (g) **Scraping:** data mine, scrape, crawl, aggregate, copy, extract or attempt to harvest (whether by any automated process, 'brute force attack' or otherwise) the InfoTrack Environment or InfoTrack Materials for any purpose, including setting up or adding to a database;
- (h) **Reverse Engineer:** decompile, disassemble, translate, replicate or otherwise reverse engineer any software programs or any part of the InfoTrack Environment or InfoTrack Materials;
- (i) **No Transfer:** sublicense, sell, resell, commercialise, assign or transfer any right, title or interest (including any Intellectual Property Rights) in the InfoTrack Materials to any person;
- (j) **Copyright:** copy, reproduce, publish, disclose, distribute, alter, modify or adapt the InfoTrack Materials or create a derivative work by combining the InfoTrack Materials (in whole or in part) with other materials to create a new work;
- (k) **Off-shore Disclosure:** transfer, store, disclose or make available the InfoTrack Materials outside of the Territory; or
- (l) **Misuse:** use InfoTrack Connect or InfoTrack Materials in any way that would or may:
  - (i) constitute a misuse of any person's Confidential Information or Personal Information or infringe upon any person's rights (including Intellectual Property Rights and Moral Rights);
  - (ii) breach any Laws or otherwise amount to a use or disclosure for unlawful purposes; or
  - (iii) damage the reputation or goodwill of InfoTrack or otherwise be misleading, deceptive or defamatory.

### 3. LICENCE OF SUPPLIER PRODUCTS

- 3.1 **Access:** Supplier must:
  - (a) provide access to Supplier Products to Customers via InfoTrack Connect or InfoTrack APIs (as applicable) and promptly deliver Supplier Products as ordered by Customers during the Term in the form and format agreed between the Parties; and
  - (b) provide any Supplier Terms applicable to the Supplier Products (to be accepted by Customers at the point of sale); and
  - (c) where applicable, within 5 Business Days after the first time InfoTrack accepts a Supply Request, provide the Supplier API to InfoTrack for InfoTrack to use it as contemplated in clause 6.
- 3.2 **Grant of Licence:** Subject to the restrictions set out in this clause 3, Supplier grants to InfoTrack a non-exclusive, non-transferable, revocable licence for InfoTrack (through InfoTrack's Permitted Users):
  - (a) to use and exercise the Intellectual Property Rights in the Supplier Products and Supplier Terms; and
  - (b) to access and use the Supplier API,

for the purposes of marketing and promoting the Supplier Products, hosting the Supplier Products and Supplier Terms on InfoTrack Connect and delivering the Supplier Products to Customers and for any other purposes expressly permitted in this Agreement.
- 3.3 **Supplier API Licence:** Without limiting the licence granted in clause 3.2(b) and subject to clause 6, during the Term, Supplier grants to InfoTrack a limited licence to access and use the Supplier API solely for the limited purposes of:
  - (a) configuring the InfoTrack API to make API Calls to the Supplier API for the purposes of enabling Permitted Users to search for, order and access Supplier Products from InfoTrack Connect; and
  - (b) with respect to Supplier test environment, testing and non-production use of the InfoTrack API in conjunction with Supplier API.
- 3.4 **Included Rights:** The rights granted in clause 3.2 permit InfoTrack to:
  - (a) **White-labelling:** apply its own branding, trade marks and 'look and feel' to Supplier Products (**Branded Supplier Products**);
  - (b) **Bundling:** combine Supplier Products with InfoTrack Materials as a composite or bundled product offering (**Bundled Supplier Products**),

and deal with such Branded Supplier Products and Bundled Supplier Products in the same manner as Supplier Products.
- 3.5 **Sublicensing:** InfoTrack may sublicense the rights granted in clauses 3.1, 3.2 and 3.3 for the purpose of enabling:
  - (a) Customers to order and use Supplier Products via InfoTrack Connect; and
  - (b) third parties to perform services for InfoTrack.
- 3.6 **Duration of Licence:** Unless expressly stated otherwise in an accepted Supply Request, the licence granted by Supplier to InfoTrack under clauses 3.2 and 3.3 will immediately come to an end upon the first to occur of:
  - (a) the expiry date specified in the Supply Request; and
  - (b) the expiry or termination of this Agreement.
- 3.7 **User Credentials:** Supplier will provide User Credentials to InfoTrack to allow access to the Supplier APIs.
- 3.8 **Permitted Users:** InfoTrack agrees that:
  - (a) it must restrict access to any Supplier API to InfoTrack's Permitted Users;
  - (b) it must restrict access to the Supplier Products solely to InfoTrack's Permitted Users and Customers; and
  - (c) InfoTrack is responsible and remains fully liable for the acts and omissions of InfoTrack's Permitted Users.
- 3.9 **Licence Restrictions:** Except as expressly permitted under this Agreement, InfoTrack must, and must ensure that none of InfoTrack's Permitted Users, and must use reasonable endeavours to ensure that none of the Customers, will (nor attempt to):

- (a) **Disclaimers:** remove, alter or deface any registered or unregistered trademark, logo, copyright notices, disclaimers or other proprietary notice appearing on or in any Supplier Products or Supplier Materials;
- (b) **Trade Marks:** adversely affect or jeopardise the rights of Supplier to register any unregistered trade marks, whether or not an application for registration has been made;
- (c) **Misuse and Damage:** interfere, damage, alter, misuse or gain unauthorised access to the Supplier Environment or Supplier Materials or otherwise interfere with the ability of any other user to use the Supplier Environment;
- (d) **Scraping:** data mine, scrape, crawl, aggregate, copy, extract or attempt to harvest (whether by any automated process, 'brute force attack' or otherwise) Supplier Materials for any purpose, including setting up or adding to a database;
- (e) **Reverse Engineer:** decompile, disassemble, translate, replicate or otherwise reverse engineer any part of the Supplier Environment or Supplier Materials;
- (f) **No Transfer:** sublicense, sell, resell, commercialise, assign or transfer any right, title or interest (including any Intellectual Property Rights) in Supplier Materials to any person;
- (g) **Copyright:** copy, reproduce, publish, disclose, distribute, alter, modify or adapt Supplier Materials or create a derivative work by combining Supplier Materials (in whole or in part) with other materials to create a new work;
- (h) **Off-shore Disclosure:** transfer, store, disclose or make available Supplier Products outside of the Territory; and
- (i) **Misuse:** use Supplier Materials or Supplier Systems in any way that would or may:
  - (i) constitute a misuse of any person's Confidential Information or Personal Information or infringe upon any person's rights (including Intellectual Property Rights and Moral Rights);
  - (ii) breach any Laws or otherwise amount to a use or disclosure for unlawful purposes; or
  - (iii) damage the reputation or goodwill of Supplier or otherwise be misleading, deceptive or defamatory.

**3.10 User Credentials:** Supplier acknowledges and agrees that:

- (a) InfoTrack may update the User Credentials from time to time in accordance with its security measures, protocols and procedures to protect the security or integrity of InfoTrack Connect and InfoTrack Environment;
- (b) Supplier must (and must ensure that each of Supplier's Permitted Users):
  - (i) take all steps necessary to protect the User Credentials from theft, loss, fraudulent or unauthorised use and keep the User Credentials confidential in accordance with clause 18;
  - (ii) ensure that the User Credentials are not disclosed to or used by any person other than an authorised Supplier's Permitted User (**Unauthorised Person**);
  - (iii) not authorise or enable any Unauthorised Person to use the User Credentials to access InfoTrack Connect or InfoTrack Environment generally; and
  - (iv) promptly notify InfoTrack if Supplier becomes aware, or has reason to suspect, that any of the User Credentials have been disclosed to, or used by, an Unauthorised Person.
- (c) Supplier is solely responsible for all use of the User Credentials by Supplier's Permitted Users and any Unauthorised Person (including all Supplier Products supplied using the User Credentials);
- (d) Supplier is solely responsible for ensuring access to and use of the User Credentials is restricted to Supplier's Permitted Users; and
- (e) InfoTrack will not be liable to any person for any Loss, Claim or other liability that may arise from the authorised, unauthorised or fraudulent use of the User Credentials.

## 4. PROVISION OF SUPPLIER PRODUCTS

- 4.1 **Supplier Obligations:** Supplier must deliver Supplier Products:
  - (a) in a professional, competent, timely and responsible manner;
  - (b) in compliance with the terms of this Agreement; and
  - (c) in compliance with all applicable Laws.
- 4.2 **Affiliates:** InfoTrack acknowledges and agrees that Supplier Products may be provided by any Supplier Affiliate, provided that Supplier remains solely responsible for the provision of Supplier Products and all necessary access to the Supplier Systems in accordance with this Agreement. For the purposes of this clause, any references to Supplier in this Agreement are read as references to Supplier and any relevant Supplier Affiliate.
- 4.3 **Supplier Acknowledgements & Obligations:** Supplier acknowledges and agrees:
  - (a) Supplier must provide InfoTrack with any Supplier Data and sufficient written instructions as reasonably required to enable InfoTrack to provide Supplier Products on InfoTrack Connect; and
  - (b) InfoTrack is entitled to rely on the accuracy and completeness of Supplier Data and Supplier Products as provided by Supplier and has no obligation to verify the accuracy or completeness of Supplier Data or Supplier Products.
- 4.4 **Exclusion of liability:** InfoTrack is not liable for any failure to provide InfoTrack Connect to the extent that such failure is due to Supplier's failure to fulfil any of Supplier's obligations under this Agreement, including those in clause 4.4.

## 5. ON-PROVISION TO CUSTOMERS

- 5.1 Supplier acknowledges and agrees that InfoTrack has no obligation to licence, sell or promote the Supplier Products on InfoTrack Connect and InfoTrack reserves the right to cease making the Supplier Products available to Customers via InfoTrack Connect at any time in InfoTrack's sole discretion.
- 5.2 InfoTrack must use reasonable endeavours to procure acceptance of any Supplier Terms applicable to Supplier Products from all Customers who order or use such Supplier Products via InfoTrack Connect.

- 5.3 If Supplier provides any Supplier Terms upon which it wishes to rely in connection with the licensing of the Supplier Products to Customers:
- (a) InfoTrack is entitled to rely on the Supplier Terms and has no obligation to review or provide legal advice in respect of the Supplier Terms;
  - (b) the Supplier Terms will apply to the Supplier Products only and in addition to the Customer Terms; and
  - (c) if there is any inconsistency between the Customer Terms or Supplier Terms, then the following order of interpretation will prevail to the extent of the inconsistency:
    - (i) the Supplier Terms, except to the extent any of the terms and conditions in the Supplier Terms are unfair contract terms under the Australian Consumer Law or otherwise illegal, unenforceable or invalid; and
    - (ii) the Customer Terms.
- 5.4 If no Supplier Terms are provided, then only the Customer Terms will apply to the provision of Supplier Products via InfoTrack Connect.
- 5.5 Supplier acknowledges and agrees that InfoTrack can create any promotional material, marketing, sales and technical documentation created by InfoTrack relating to the sub-licence of any Supplier Products to any Customer (including any promotional material on a website or in any electronic marketing). InfoTrack will provide a copy to Supplier for its review.
- 5.6 InfoTrack agrees to inform Supplier in writing promptly InfoTrack has knowledge of the existence of any circumstances or events which may suggest that any person has any unauthorised access to or use of Supplier Products.
- 5.7 Unless otherwise agreed with Supplier, InfoTrack must:
- (a) only provide Supplier Products to a single Customer on a one-to-one basis;
  - (b) except as provided under clause 3.3, only provide Supplier Products in its their original form as provided by Supplier or as modified or adapted as approved by Supplier (not to be unreasonably withheld);
  - (c) not re-supply or re-deliver a Supplier Product supplied to one Customer to another Customer.
- 5.8 Neither Party will make any representations or give any warranties about the other party or the other party's products (including Supplier Products) unless expressly authorised by the other party to do so and neither party has any right or power to (nor will they purport to) grant any rights or create any liabilities or obligations on behalf of the other party.

## 6. API TERMS

- 6.1 **Integration Plan:** The Parties may agree upon an Integration Plan, which may include:
- (a) the InfoTrack APIs and API Calls permitted to be used and accessed by Supplier;
  - (b) Supplier APIs and API Calls permitted to be used and accessed by InfoTrack; and
  - (c) any Call Limits, including maximum number or frequency of API Calls to be made through the InfoTrack API and Supplier API.
- 6.2 **Variations:** Any material variations or changes to the Integration Plan must be agreed to in writing and incorporated into a revised Integration Plan to be agreed in writing by the Parties prior to the variations taking effect.
- 6.3 **API Obligations:** Supplier must implement, enable and comply with functionality and requirements for the InfoTrack API as specified in the Integration Plan, including to:
- (a) enable any required functionalities;
  - (b) ensure all prohibited functionalities are disabled;
  - (c) (where appropriate) enable any relevant permitted functionalities; and
  - (d) comply with any Call Limits.
- 6.4 **Suspension:** Each Party may, acting reasonably, suspend the other Party's access to the APIs or impose restrictions or limitations on the number and frequency of API Calls to the relevant APIs where:
- (a) the Call Limits are exceeded for the relevant period;
  - (b) the number or frequency of those API Calls nears or may exceed the capacity of the relevant APIs (as determined by the first Party);
  - (c) the first Party considers it reasonably necessary for the security of its APIs (including to ensure the continued viability of the APIs); or
  - (d) there is any event of degradation or instability in the first Party's APIs or its Systems.
- 6.5 **Responsibilities:** Each Party will be responsible for:
- (a) obtaining access to the other Party's APIs (including any and all associated costs, such as internet service provider fees, telecommunications fees, and the cost of any and all required equipment, including Development tools, hardware, software and other technology);
  - (b) ensuring its systems, processes or technologies with respect to gaining access to and use of the other Party's APIs will be fully compliant with appropriate industry practices with respect to systems and data security; and
  - (c) covering any and all costs associated with work, Development, service or general maintenance required to interact its own APIs with the other Party's APIs.

## 7. SERVICE VARIATIONS

- 7.1 **Reservation of Rights:** Subject to clauses 7.2, 7.3 and 7.6, InfoTrack reserves the right to, at any time during the Term:
- (a) modify the method of supply and delivery of, or access to, Supplier Products via InfoTrack Connect;
  - (b) direct Supplier to implement and use the most recent version of the InfoTrack APIs, upon InfoTrack making those versions available to Supplier in a manner to be notified by InfoTrack to Supplier;



- (c) suspend or otherwise deactivate Supplier's, and each of the relevant Supplier's Permitted Users', access to InfoTrack Connect, where there is an actual or suspected systems or security concern associated with the continued access by those users;
- (d) make temporarily unavailable or otherwise suspend access to the InfoTrack APIs or InfoTrack Connect where reasonably necessary for:
  - (i) scheduled or emergency maintenance;
  - (ii) system updates;
  - (iii) other upgrades; or
  - (iv) any other changes to InfoTrack Connect or InfoTrack Environment; and
- (e) gather analytics in relation to any and all activity on InfoTrack Connect and the use of Supplier Products for internal purposes (subject to clause 18), including for purposes such as billing, gauging interest and identifying usage patterns.

**7.2 Service Variations (InfoTrack):** InfoTrack reserves the right, at any time during the Term, to change or discontinue any feature or functionality of InfoTrack Connect for any reason and at any time, including where:

- (a) required by Law;
- (b) reasonably necessary (in InfoTrack's opinion) to avoid, defend or resolve any third party Claim;
- (c) a relevant third party arrangement on which the provision of InfoTrack Connect or InfoTrack Environment relies expires or is terminated during the Term; or  
and where this occurs, Supplier:
- (d) may, acting reasonably, elect to continue to provide the affected Supplier System or Supplier Products by any other means it sees fit;
- (e) must use commercially reasonable endeavours to continue to provide any affected Supplier System or Supplier Products to InfoTrack (irrespective of what may previously have been provided to InfoTrack); and
- (f) may terminate any relevant licences relating to the affected Supplier Systems or Supplier Products by providing reasonable Notice to InfoTrack.

**7.3 Service Variations (Supplier):** Supplier reserves the right, at any time during the Term, to change or discontinue any feature or functionality of Supplier Products for any reason and at any time, including where:

- (a) required by Law;
- (b) reasonably necessary (in Supplier's opinion) to avoid, defend or resolve any third party Claim;
- (c) required from time to time by the Third Party Supplier;
- (d) a relevant third party arrangement on which the provision of Supplier APIs or Supplier Products relies expires or is terminated during the Term; or  
and where this occurs, Supplier:
- (e) may, acting reasonably, elect to continue to provide the affected Supplier System or Supplier Products by any other means it sees fit, including through another Third Party Supplier;
- (f) must use commercially reasonable endeavours to continue to provide any affected Supplier System or Supplier Products to InfoTrack (irrespective of what may previously have been provided to InfoTrack); and
- (g) may terminate any relevant licences relating to the affected Supplier Systems or Supplier Products by providing reasonable Notice to InfoTrack.

**7.4 New version of Supplier Products:** Supplier must not change, amend or release new versions of an approved Supplier Product without first seeking approval from InfoTrack (which must not be unreasonably withheld). InfoTrack reserves the right to delay or refuse the implementation of new versions of a Supplier Product where such new versions require changes or technical updates to be made by InfoTrack including within InfoTrack Connect or InfoTrack APIs.

**7.5 Notice of Change:** InfoTrack will notify Supplier before exercising its rights under clauses 7.1(a) to 7.1(d) or 7.2, and Supplier will notify InfoTrack before exercising its rights under clauses 7.3 or 7.4. Each party will notify the other party in advance of any such changes at the earliest practical opportunity, except where it is not reasonably possible for InfoTrack to do so (including in the case of emergencies or where the security of the InfoTrack Environment may be at risk).

**7.6 Termination:** Where either party exercises its rights under clauses 7.1(a) to 7.1(d) or 7.2 (in the case of InfoTrack), or clauses 7.3 or 7.4 (in the case of Supplier), the party which provided notice under clause 7.5 may terminate this Agreement immediately by notice in writing to the other Party within 60 days of receiving notice of the change under clause 7.5.

## 8. SUPPLIER DATA

- 8.1 Supplier Data:** Supplier will provide Supplier Data to the extent reasonably required to enable the InfoTrack to host Supplier Products via InfoTrack Connect.
- 8.2 Licence to Use Supplier Data:** Supplier grants InfoTrack a non-exclusive, non-sublicensable (except as provided under clause 8.3) licence to use Supplier Data during the Term for the Permitted Purpose. InfoTrack must not use Supplier Data for any other purpose without Supplier's prior written consent.
- 8.3 Sublicence:** Supplier consents to and agrees that InfoTrack may sub-license and disclose Supplier Data to Customers, Third Party Suppliers and subcontractors during the Term for the Permitted Purpose.

## 9. FEES AND INVOICES

- 9.1 Payment of Fees:**
  - (a) Supplier must issue to InfoTrack a Tax Invoice that complies with the GST Law.

- (b) Payment of any Tax Invoice issued by Supplier to InfoTrack will fall due 30 days after the date of issue of the relevant Tax Invoice.
- (c) InfoTrack may withhold payment of any Fees which it disputes in good faith but must pay to Supplier all undisputed Fees in accordance with the terms of this Agreement.

## 9.2 GST

- (a) All Fees quoted under this Agreement will be exclusive of GST, unless expressly stated otherwise.
- (b) Subject to prior receipt of a valid Tax Invoice, InfoTrack agree to pay GST on any Taxable Supply made to it under this Agreement, at the same time and in the same way as it is required to make payment of the applicable Fees for the Taxable Supply.
- (c) If an adjustment event occurs in relation to a Taxable Supply made under or in connection with this Agreement, the amount of GST will be recalculated to reflect that adjustment and an appropriate payment will be made between the Parties.
- (d) Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it must be reduced by any Input Tax Credit entitlement, or notional Input Tax Credit entitlement, in relation to the relevant cost, expense or other liability.

## 10. WARRANTIES, ACKNOWLEDGEMENTS AND EXCLUSIONS

### 10.1 **Mutual Warranties:** Each Party represents and warrants to the other on a continuing basis that:

- (a) it has full corporate power and authority to enter into and give effect to this document and to complete any and all transactions contemplated by this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) at the date of this Agreement, the execution, delivery and performance of this Agreement by it does not contravene any contractual, legal or other obligations that apply to it;
- (d) on execution of this Agreement, its obligations under this Agreement will be valid, binding and enforceable on it; and
- (e) it is lawfully able to grant any relevant licences to the other Party as provided for under this Agreement.

### 10.2 **Supplier Warranties:** Further to the mutual warranties set out in clause 10.1, Supplier warrants that:

- (a) it will not knowingly introduce any errors, faults or other imperfections to InfoTrack Connect or Supplier Products;
- (b) it has the necessary consents or waivers for the upload of Supplier Products onto InfoTrack Connect;
- (c) as far as it is aware, any Supplier Products it uploads onto InfoTrack Connect is factually correct, truthful and is not misleading or deceptive or likely to mislead and deceive;
- (d) any use of Supplier Data or Supplier Products by InfoTrack or the Customers does not and will not infringe any rights of a third person (including any intellectual property rights (including but not limited to trade mark, copyright, or moral rights)); and
- (e) it will, and will ensure that Supplier's Permitted Users, comply with all Laws.

## 11. INDEMNITIES

### 11.1 **Mutual indemnities:** Subject to clause 12, each Party (**Indemnifying Party**) must indemnify and keep indemnified the other Party from and against any Losses (including any reasonable legal costs) reasonably incurred or suffered by the other Party arising directly from any third party Claims in respect of:

- (a) any infringement by the Indemnifying Party or its Representatives upon any person's Intellectual Property Rights or Moral Rights, or misuse of any person's Confidential Information or Personal Information in connection with this Agreement;
- (b) any breach of clause 17 (Intellectual Property Rights) or clause 19 (Privacy) by the Indemnifying Party or its Representatives;
- (c) any wilful, criminal or fraudulent act or omission of the Indemnifying Party or its Representatives in breach of this Agreement; or
- (d) any personal injury or death or property damage caused by the acts or omissions of the Indemnifying Party or its Representatives in connection with this Agreement.

### 11.2 **Supplier indemnities:** Subject to clause 12, Supplier must indemnify and keep indemnified InfoTrack from and against any Losses (including any reasonable legal costs) reasonably incurred or suffered by InfoTrack arising directly from any third party Claims in respect of:

- (a) the terms and conditions of the Supplier Terms to the extent any of the terms and conditions in the Supplier Terms may be unfair contract terms under the Australian Consumer Law or otherwise illegal, unenforceable or invalid; or
- (b) any breach of the Supplier Terms by Supplier.

## 12. LIMITATION OF LIABILITY

### 12.1 **Liability for supply of InfoTrack Connect or InfoTrack APIs:** If Supplier is a Consumer (as defined under section 3 of the Australian Consumer Law), then InfoTrack's liability to Supplier in connection with any breach of the Consumer Guarantees is limited to the re-supply of InfoTrack Connect or InfoTrack APIs. This limitation does not apply if it is not fair and reasonable in Supplier's particular circumstance for InfoTrack to rely on this limitation.

### 12.2 **Liability Cap:** Except as provided under clause 12.3, and subject to clauses 12.1, 12.4, 12.5 and 12.6 and to the extent permitted by Law, each Party's maximum aggregate liability to the other Party or any other person (including any Affiliate of the Party) for all and any Claims or Losses (in aggregate) howsoever arising in connection with this Agreement (including in equity, contract, tort or negligence) whether directly or indirectly will be limited to the total amount of Fees actually paid to Supplier by InfoTrack under this Agreement solely within the 12 months immediately preceding the date of any such Claim or Loss.



- 12.3 **Indemnities:** Subject to clauses 12.4, 12.5 and 12.6 and to the extent permitted by Law, each Party's maximum aggregate liability to the other Party or any other person (including any Affiliate of the Party) for all and any Claims or Losses (in aggregate) arising under clause 11.1 (for both Parties) or 11.2 (in the case of Supplier) will not be limited.
- 12.4 **Consequential Loss:** To the maximum extent permitted by Law (but excluding any event set out in clauses 11.1), neither Party will be liable to the other Party for any Consequential Loss arising out of or in connection with this Agreement.
- 12.5 **Contributory Acts:** To the extent permitted by Law, a Party's liability to the other Party in connection with this Agreement will be reduced proportionately by the extent to which the acts or omissions of the other Party or any of its Affiliates caused or contributed to the relevant Loss suffered or incurred by the first Party.
- 12.6 **General Exclusions:** Subject to clause 12.1 and notwithstanding any other term of this Agreement, InfoTrack will have no liability whatsoever to Supplier or any of Supplier's Affiliates in respect of:
- (a) any acts or omissions, delay, defect, error, failure or loss of service in connection with Supplier System(s) or Supplier Products;
  - (b) any equipment or services provided by a telecommunications organisation (including any speeds or capabilities of such equipment or services) or any requirements of the telecommunications authority; or
  - (c) a Force Majeure Event.
- 12.7 **Survival of Clause:** This clause 12 is intended to survive the termination of this Agreement.

## 13. SUSPENSION OF ACCESS

- 13.1 **Suspension:** InfoTrack may, by notice in writing, suspend this Agreement in whole or in part (by reference to specified Supplier Products) if:
- (a) InfoTrack becomes aware of, or reasonably suspects that, Supplier is in breach of this Agreement;
  - (b) InfoTrack becomes aware of, or reasonably suspects that, Supplier are in breach of clause 20 (Data Protection and Security); or
  - (c) the relevant circumstances under clauses 14.2 or 16.2 arise.
- 13.2 **Notice:** When exercising its rights under this clause, Supplier will use reasonable commercial endeavours to provide as much notice as possible in the circumstances.

## 14. TERMINATION

- 14.1 **Termination for Convenience:** Either Party may terminate this Agreement by providing at least 30 days' written notice to the other Party.
- 14.2 **Termination for Material Breach:** Either Party may terminate or suspend (at its election) this Agreement at any time with immediate effect by giving Notice to the other Party where the other Party:
- (a) commits a material breach of this Agreement that cannot be remedied;
  - (b) commits a material breach of this Agreement that is capable of remedy and the Party fails to remedy that breach within ten (10) Business Days following receipt of Notice from the other Party requiring it to do so;
  - (c) commits multiple or recurring breaches of this Agreement which, in aggregate, amount to a material breach, regardless of whether or not such breaches are cured or remain uncured or are capable of being remedied;
  - (d) is the subject of or suffers an Insolvency Event;
  - (e) does anything that materially damages or is likely to materially damage the reputation or any relevant brand of the other Party.

## 15. CONSEQUENCES OF TERMINATION

- 15.1 **Obligations:** Upon termination or expiry of this Agreement for any reason:
- (a) InfoTrack must immediately cease using all relevant Supplier Products and any other Supplier Materials in InfoTrack's possession or control;
  - (b) Supplier must immediately cease using all relevant InfoTrack Data and InfoTrack Materials in Supplier's possession or control;
  - (c) Supplier must immediately cease accessing or using any InfoTrack APIs and InfoTrack's Intellectual Property Rights;
  - (d) subject to clause 15.1(e), unless a request for return has been made within 30 days' of termination, each Party must promptly securely and permanently delete or destroy all Supplier Materials (in the case of InfoTrack), InfoTrack Materials (in the case of Supplier), any other materials or records in its possession or control provided to it by the other Party in connection with this Agreement or containing Confidential Information of the other Party and, if requested, certify in writing that it has complied with this clause;
  - (e) each Party may retain a copy of the following information until no longer required for the specified purpose, and in any event for a maximum period of seven (7) years from the date of termination of this Agreement (or such longer period as may be required by Law) (**Retention Period**), following which it must be permanently deleted and destroyed in accordance with this clause 15:
    - (i) any documents or other materials which the Recipient must retain to the extent required by Law or under any legally binding order or rule of any regulator or stock exchange;
    - (ii) any documents or other materials which the Recipient must retain to the extent required for accounting, corporate governance, insurance or litigation purposes; or
    - (iii) any documents or materials contained in an archived backup of the respective Party's relevant software (or other server environment);

the same to be kept in accordance with each Party's respective confidentiality obligations as set out in clause 18 of this Agreement and not used for any purpose other than as permitted above.

- (f) the Recipient must not retain copies of any Confidential Information in any form, except to the extent expressly provided for in clause 15.1(e) or clause 18.

15.2 **Accrued Rights:** Termination or expiry of this Agreement will not act as a waiver of any breach or other accrued rights arising in connection with this Agreement; and will not act as a release of either Party from any accrued obligations under this Agreement.

## 16. FORCE MAJEURE

- 16.1 **Neither Party Liable:** Neither Party will be liable for any failure to perform or delay in performing their obligations under this Agreement if the failure or delay results from an event of Force Majeure.
- 16.2 **Suspension of Obligations:** To the extent that a Party's delay or inability to perform the Party's obligations is due to an event of Force Majeure, the affected obligations of that Party under this Agreement will be suspended until the passing of that Force Majeure event, subject to that Party:
  - (a) promptly notifying the other Party of the Force Majeure event; and
  - (b) taking all reasonable steps to minimise any disruption to, and resume the performance of, its affected obligations at the earliest opportunity.
- 16.3 **Fee Suspension:** If substantially all of Supplier's obligations under this Agreement are suspended by a Force Majeure event under clause 16.1, InfoTrack's obligation to pay Fees under this Agreement for any affected Supplier Products or Supplier Systems shall be abated on a pro rata basis for the period of any such suspension.

## 17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 **InfoTrack IP:** Supplier acknowledges and agrees that:
  - (a) all rights, title and interests (including all Intellectual Property Rights) in or arising out of InfoTrack Connect, InfoTrack API, the InfoTrack Data, the InfoTrack Environment and all other InfoTrack Materials (including any Modifications to them) are owned by and will immediately and absolutely vest in InfoTrack or its Affiliates on and from creation; and
  - (b) InfoTrack Connect, InfoTrack API, the InfoTrack Data, the InfoTrack Environment and all other InfoTrack Materials are made available to Supplier on a limited access basis, and except to the extent of any right expressly granted under this Agreement, Supplier does not acquire any Right, title, interest or any Intellectual Property Rights to InfoTrack Connect, InfoTrack API, the InfoTrack Data, the InfoTrack Environment or any other InfoTrack Materials through this Agreement.
- 17.2 **Supplier IP:** InfoTrack acknowledges and agrees that:
  - (a) all rights, title and interests (including all Intellectual Property Rights) in or arising out of Supplier Materials (including any modifications made to Supplier Materials) are owned by and will immediately and absolutely vest in Supplier, its Affiliates or Third Party Suppliers on and from creation;
  - (b) Supplier System, Documentation and Supplier Products are made available to InfoTrack on a limited access basis, and except to the extent of any right expressly granted under this Agreement, InfoTrack does not acquire any Right, title, interest or any Intellectual Property Rights to Supplier Materials through this Agreement.
- 17.3 Supplier is responsible for obtaining and maintaining all necessary licences, permits, consents, approvals or other authorities or permissions necessary to enable InfoTrack to facilitate the provision of Supplier Products to the Customers.

## 18. CONFIDENTIALITY

- 18.1 **Mutual obligations of confidence:** Subject to clause 18.2, where the Recipient receives Confidential Information from the Discloser under or in connection with this Agreement, the Recipient must:
  - (a) keep the Confidential Information strictly confidential;
  - (b) not use, modify, reproduce or exploit the Confidential Information for any purpose other than as expressly permitted under this Agreement;
  - (c) not disclose Confidential Information to any person other than as expressly permitted under this Agreement;
  - (d) ensure that the Recipient's Representatives and Affiliates strictly observe all of the Recipient's obligations as set out in this Agreement as if those obligations were imposed on the relevant Representative or Affiliate directly; and
  - (e) establish and maintain effective security measures to safeguard the Confidential Information in the Recipient's possession or control (including Confidential Information in the possession or control of any of its Representatives or Affiliates) from unauthorised access, use, copying or disclosure.
- 18.2 **Permitted use and disclosure:** Notwithstanding clause 18.1, and subject to clause 18.3 the Recipient may disclose Confidential Information to:
  - (a) its Representatives, limited to the extent necessary to perform the Recipient's obligations or exercise its rights under this Agreement;
  - (b) to its professional advisors, to obtain legal or other professional advice in relation to matters arising under or in connection with this Agreement;
  - (c) the extent required to comply with any Law, binding directive of a Regulator or a court order;
  - (d) to the extent required to do so in connection with legal proceedings relating to this Agreement; or
  - (e) as otherwise agreed in writing by the Parties.
- 18.3 **Conditions of Disclosure:** Before using or disclosing the Confidential Information under clause 18.2, the Recipient must:
  - (a) notify the Discloser promptly upon becoming aware that a disclosure may be required under clauses 18.2(c) or 18.2(d);

- (b) limit the disclosure of any Confidential Information permitted under clause 18.2 solely to the extent strictly necessary to satisfy the purpose of the disclosure; and
  - (c) without limiting any other obligations under this Agreement, take all reasonable and lawful steps to preserve the confidentiality of the Confidential Information and, to the extent possible, ensure that any Confidential Information disclosed under clause 18.2 is subject to obligations of confidentiality in accordance with the terms of this Agreement.
- 18.4 **Breach:** The Recipient must:
- (a) notify the Discloser in writing promptly upon becoming aware of an actual or suspected breach of this clause 18;
  - (b) take any action that is necessary to prevent or remedy any breach of the confidentiality obligations set out under this clause 18 or other unauthorised disclosure of Confidential Information, at its own cost.
- 18.5 **Acknowledgements:** The Parties acknowledge and agree that the other Party's Confidential Information is commercially sensitive, proprietary and valuable to the other Party and, in respect of any breach or threatened breach by a Party or any of its Representatives or Affiliates of its obligations under this Agreement (including those contained in this clause 18):
- (a) damages may not be available, or if they are, they may not be an adequate remedy for the other Party;
  - (b) the other Party is entitled to seek injunctive relief as a remedy, in addition to any other remedies available at Law; and
  - (c) any Confidential Information disclosed by the Discloser to the Recipient may relate to or be owned by a member of the Discloser's Affiliates. To that extent:
    - (i) the Recipient agrees that any Loss incurred by any the Discloser's Affiliate as a result of a breach, act or omission by the Recipient is deemed to be a Loss suffered by the Discloser; and
    - (ii) for the purposes of this clause, references in this Agreement to the Recipient are read as references to the Recipient and the Recipient's Affiliates.
- 18.6 **Responsibility for Representatives:** Each Party must ensure that its Representatives and Affiliates do not do, or omit to do, anything which, if done or omitted to be done by that Party, would breach this clause 18.
- 18.7 **Survival:** All obligations of confidence set out in this clause 18 are intended to continue in full force and effect even after the termination of this Agreement.

## 19. PRIVACY

- 19.1 **Compliance with Privacy Laws:** Each Party warrants and agrees that it and its Permitted Users will comply with all Privacy Laws in connection with any Personal Information collected, used, disclosed, stored or received in connection with this Agreement.
- 19.2 **Disclosure of Personal Information:** Each Party warrants that any Personal Information that the Discloser discloses to the Recipient or its Permitted Users under this Agreement has been collected, used, processed, held and disclosed with in accordance with the relevant requirements of the Privacy Laws.
- 19.3 **Receipt of Personal Information:** In relation to any Personal Information disclosed to a Recipient by the Discloser under this Agreement, the Recipient must:
- (a) not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Laws and the Permitted Purposes;
  - (b) take all reasonable steps to ensure that the information is protected from misuse, Loss, unauthorised access, modification or disclosure;
  - (c) take all reasonable steps to destroy or permanently de-identify the information upon the earlier of the expiry or termination of this Agreement or when it is no longer needed for a purpose connected with this Agreement;
  - (d) only use or disclose the information for a purpose connected with this Agreement or as required by Law; and
  - (e) notify the Discloser in writing, without delay and within no more than 72 hours after becoming aware:
    - (i) of any compliance notice issued by a relevant Regulator; or
    - (ii) of any breach of this clause 19 or any applicable Privacy Law.
- 19.4 **Notification of Data Breach:** Where a Party has reasonable grounds to suspect a Data Breach has occurred, that Party will:
- (a) notify the other Party in writing including all relevant details regarding the suspected Data Breach without undue delay and no later than 72 hours after becoming aware of such a breach;
  - (b) co-operate with the other Party to investigate the suspected Data Breach;
  - (c) take all reasonable steps to mitigate the impact of the Data Breach;
  - (d) take all reasonable actions to prevent any repeat of the Data Breach; and
  - (e) co-operate with the other Party in good faith to minimise reputational damage or loss of goodwill, including liaising on communications with the Privacy Regulator, affected individuals and other third parties to minimise disruption or distress to the individual.

## 20. DATA PROTECTION & SECURITY

- 20.1 **Obligations & Safeguards:** each Party will use commercially reasonable efforts to establish, implement and maintain security controls in respect of any InfoTrack Environment or Supplier Environment (as applicable) used to deliver Supplier Products, or that stores, handles, processes or transmits InfoTrack Data:
- (a) that meet or exceed ISO 27001:2013 and ISO 9001:2015 (or equivalent standard) and any successor standards;
  - (b) that are designed to ensure that Supplier Products and any other materials supplied by Supplier to InfoTrack under this Agreement do not contain any publicly known Malware; and
  - (c) that are designed to protect InfoTrack Data that is stored, handled or processed by Supplier from accidental or unlawful destruction, loss, alteration; or unauthorised disclosure or access.

- 20.2 **Other Security Measures:** each Party must establish, maintain and enforce appropriate security measures designed to ensure that:
- (a) InfoTrack Data or Supplier Data (as applicable) and any other materials provided by the first Party to the other Party do not contain any publicly known Malware;
  - (b) no Unauthorised Persons can obtain unauthorised access to InfoTrack Connect or otherwise use InfoTrack Connect for purposes not authorised or permitted by the terms of this Agreement (including for Non-Permitted Purposes).
- 20.3 **Supplier Warranties:** Supplier warrants and agrees that Supplier will not:
- (a) seek to circumvent or attempt to violate any data security measures employed by InfoTrack in respect of its access to and use of InfoTrack Connect or InfoTrack Environment generally; or
  - (b) attempt to scan or test the vulnerability of the InfoTrack Environment or otherwise attempt to breach InfoTrack's data security systems or any applicable authentication procedures.

## 21. MODERN SLAVERY

- 21.1 In performing its obligations under this Agreement, Supplier must:
- (a) not use any form of Modern Slavery in connection with this Agreement;
  - (b) comply with any Modern Slavery Laws by which it is bound;
  - (c) not do anything that will cause it to breach any Modern Slavery Law;
  - (d) have and maintain throughout the term of this Agreement its own policies and procedures that are designed to ensure Supplier's compliance with Modern Slavery Laws;
  - (e) include, in each of its contracts with its subcontractors or suppliers, anti-slavery provisions that are at least as onerous as those set out in this clause;
  - (f) notify InfoTrack with details of any instances of Modern Slavery identified within Supplier's business operations or supply chain, and provide information about the steps Supplier is taking to investigate and address the issue (and proposed timeframe for such steps); and
  - (g) co-operate with any audit or respond to any risk questionnaires issued by the InfoTrack and provide evidence of the implementation of the policies and procedures referred to in clause 21.1(d) above when requested to do so by the Client and which is reasonably required by the Client to comply with its Modern Slavery Law obligations.

## 22. NOTICES

- 22.1 **Form of Notice:** All notices or other communications relating to this Agreement must be in writing in English and addressed to the other Party at their address for service or other address as notified in writing from time to time (**Notice**).
- 22.2 **How Given:** A Notice is taken to be given:
- (a) if sent by post on the third (tenth, if posted to or from a place outside Australia) Business Day after posting; or
  - (b) if delivered by hand, at the time of delivery; or
  - (c) in the case of email transmission, upon completion of successful transmission if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient.
- 22.3 **Change in Details:** A Party may change its contact details for service of notices under this clause by giving written Notice of the new details to the other Party.

## 23. MISCELLANEOUS

- 23.1 **Assignment:** A Party must not assign any of its rights or obligations under this Agreement, without the prior written consent of the other Party.
- 23.2 **Costs:** Except as otherwise set out in this Agreement, each Party must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement.
- 23.3 **Entire Agreement:** This Agreement contains everything the Parties have agreed in relation to the matters it deals with. Neither Party can rely on an earlier agreement, or anything said or done by another Party, or by a director, officer, agent, partner or employee of that Party, before this Agreement was executed, except as permitted by Law.
- 23.4 **Further acts:** Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.
- 23.5 **No agency or partnership:** The relationship between the Parties is that of principal and independent contractor. No Party is an agent, Representative or partner of any other Party by virtue of this Agreement.
- 23.6 **No authority to act:** No Party has any power or authority to act for or to assume any obligation or responsibility on behalf of another Party, to bind another Party to any agreement, negotiate or enter into any binding relationship for or on behalf of another Party or pledge the credit of another Party except as specifically provided in this Agreement or by express written agreement between the Parties.
- 23.7 **Severability:** If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 23.8 **Variation:** No variation of this Agreement will be of any force or effect unless it is in writing and accepted by the Parties to this Agreement. In this regard, the following will constitute acceptance by Supplier:
- (a) electronic acceptance such as by clicking "I agree" (or similar) upon notification of any variation to the terms of this Agreement; and

- (b) continued use of InfoTrack Connect or provision of Supplier Products to InfoTrack following the written notification of any variation to the terms of this Agreement.

- 23.9 **Waiver:** The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 23.10 **Governing law and jurisdiction:** This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## 24. DEFINITIONS AND INTERPRETATION

### 24.1 Definitions

The following definitions apply in this Agreement, unless context otherwise requires:

**Affiliate** means, with respect to a Party, an entity or individual that directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that Party, including a Related Body Corporate.

**APIs** means the InfoTrack APIs or Supplier APIs, as applicable.

**API Call** means a call, request or order initiated by the InfoTrack APIs to Supplier APIs for Supplier Products.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth), any equivalent State or Territory legislation, and any equivalent applicable provisions of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Business Day** in a place means a day other than a Saturday, Sunday or gazetted public holiday in that place (and if no place is specified, in New South Wales).

**Call Limits** means any restriction on the number or frequency of API Calls which may be made by one of the APIs as specified in the Integration Plan; or if no call limit is specified, as determined by InfoTrack acting reasonably to ensure the safe and efficient functioning of the InfoTrack APIs.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether arising in contract (including under an indemnity), tort (including negligence), statute, equity, at Law or otherwise.

**Confidential Information** means any information (in any form) directly or indirectly disclosed by the Discloser to the Recipient (regardless of whether identified as such or not) and includes:

- (a) the terms of this Agreement and the commercial arrangements between the Parties;
- (b) any information that the Recipient knows, or ought to know, is confidential to the Discloser;
- (c) the Discloser's Intellectual Property Rights and any Intellectual Property Rights of third party suppliers to the Discloser;
- (d) in relation to Supplier, Supplier Materials; and
- (e) in relation to InfoTrack, any InfoTrack Materials,

but does not include the Excluded Information.

**Consequential Loss** means:

- (a) special, indirect, incidental or punitive loss or damage (including loss of profits or savings, loss of opportunity, loss or damage to or corruption of data, loss of goodwill, loss of reputation), whether arising in equity, for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise; or
- (b) loss not in the ordinary contemplation of the Parties upon entering into this Agreement.

**Consumer Guarantees** means the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law.

**Corporations Act** means the *Corporations Act 2001* (Cth) and any regulations made under it.

**Customer Terms** means the terms and conditions of a contract between InfoTrack and a Customer for the supply of products, including the Supplier Products, to that Customer via InfoTrack Connect or otherwise.

**Customers** means the end users of InfoTrack Connect who order products offered by InfoTrack or its suppliers, including Supplier Products.

**Data Breach** means the accidental or unlawful destruction, loss, alteration, or unauthorised disclosure of, or access to:

- (a) where InfoTrack are the Recipient, Supplier Materials transmitted, stored or otherwise processed by InfoTrack in connection with this Agreement; or
- (b) where Supplier is the Recipient, InfoTrack Data transmitted, stored or otherwise processed by Supplier in connection with this Agreement.

**Develop** means, in connection with a thing, to develop, create, add, enhance, reduce, modify, adapt or prepare derivative works based on, that thing (and **Development** means the corresponding result of such activities).

**Direct Marketing** includes the use or disclosure of Personal Information to identify, target, segment or filter and then directly communicate to an identified individual or group of individuals for the purposes of marketing or promoting goods or services (whether or not addressed to that individual by name) by any means and includes, telemarketing, email, SMS, targeted online advertising (including Facebook and Google Ads), mail or flyer drops and list brokering.



**Discloser** means the Party disclosing Confidential Information or Personal Information (as applicable) to the other Party (or its Representatives) in connection with this Agreement.

**Documentation** means the whole and any part of Supplier guides, manuals, user instructions and written specifications regarding Supplier Products or Supplier Systems and any marketing material regarding Supplier Products or Supplier System.

**Excluded Information** means any information to the extent which:

- (a) it is in, or becomes part of, the public domain other than through breach of this Agreement or an obligation of confidence owed to the Discloser;
- (b) the Recipient can prove by contemporaneous written documentation:
  - (i) it was already known to it at the time of disclosure by the Discloser;
  - (ii) it was independently developed by the Recipient without reference to the Confidential Information of the Discloser; or
  - (iii) the Recipient acquired it from a source other than the Discloser or any of its Representatives, where such a source is entitled to disclose it on a non-confidential basis.

**Fees** means the fees charged by Supplier for Supplier Products notified in Supplier System (as varied from time to time).

**Force Majeure** means any circumstances beyond a Party's control including strikes or industrial disputes, acts of God, epidemics and pandemics, acts of government, declared states of emergency, refusal of licence, failures or outages of any utilities (including telecommunications and data communication equipment or services), denial of service attacks, fire, explosion, floods, cyclone, tsunami or other extreme weather events, aircraft unserviceability or unavailability, war, terrorism or civil disturbance, or impossibility of obtaining material or data.

**GST** means the relevant goods and services tax, value added tax or sales tax as defined in the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all regulations and rulings made under it.

**InfoTrack API** means InfoTrack's application programming interface for InfoTrack Connect, which is a set of functions and procedures that allows the exchange of data between InfoTrack and Supplier.

**InfoTrack Connect** means the web-based online search platforms and systems or Supplier-specific portal of the online search platform (as applicable) owned and hosted by InfoTrack and which may be accessed by:

- (a) Supplier and its Permitted Users for the purposes of making Supplier Products available to InfoTrack's Customers via an InfoTrack system;
- (b) InfoTrack Customers for the purposes of ordering products and services from InfoTrack, including the Supplier Products.

**InfoTrack Data** means any data, information, text, content or other materials (including Personal Information and Confidential Information) which is supplied to Supplier or its Affiliates by InfoTrack or InfoTrack's Representatives in connection with this Agreement; but for clarity, does not include: any Supplier Materials supplied to InfoTrack in connection with this Agreement; any materials already held by Supplier prior to any supply by InfoTrack to Supplier; any material that independently comes into the possession of Supplier (other than through InfoTrack or InfoTrack's Representatives); and any metadata generated by Supplier in the operation of the Supplier Environment or provision of Supplier Products.

**InfoTrack Environment** means any hardware, software, information, networks, systems, databases or other technology solutions owned or controlled by InfoTrack (in the ordinary course of operating its business), including InfoTrack Connect.

**InfoTrack Materials** means all materials, works, rights and Intellectual Property Rights held, owned or licensed by InfoTrack or its Affiliates (current or future) including any InfoTrack Data, the InfoTrack Environment, and any metadata generated by InfoTrack in the operation of the InfoTrack Environment, and includes all Modifications to those materials.

**Input Tax Credit** has the meaning given to it in the GST Law.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a Party:

- (a) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) it is insolvent within the meaning of section 95A of the Corporations Act;
- (c) it must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the Corporations Act;
- (d) it fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) it has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) it has a controller (within the meaning of section 9 of the Corporations Act) or similar officer appointed to all or any of its property; or
- (g) it has proceedings commenced, a resolution passed or proposed in a Notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, Notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

**Insolvent** means, with respect to an entity, that such entity is or states that it is insolvent, is unable to pay its debts as they come due, is in liquidation, is under administration (including statutory management) or has a controller appointed to its property, ceases conducting business in the normal course, is subject to any arrangement to protect itself from creditors or dissolves.

**Integration Plan** means a plan for the implementation and integration of the APIs.

**Intellectual Property Rights** means all industrial and intellectual property rights throughout the world protected or recognised at Law and includes all current and future registered and unregistered rights relating to:



- (a) trade marks, business names, domain names, copyright works, databases, software, circuit layouts, designs, patents, trade secrets, know-how, inventions and discoveries, and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967; and
- (b) any application or right to apply for the registration of any of the rights referred to in paragraph (a) above.

**Law** means all applicable common law, principles of equity, legislation, statutes, and regulations (and consolidations, amendments, re-enactments or replacements of any of them).

**Loss** means all liabilities, losses, damages, outgoings, costs and expenses including reasonable legal costs (on a solicitor-client basis) and any penalties or fines imposed by a regulatory authority.

**Malware** means malicious software code, programming instruction, or including any thing or device that may damage, disrupt, overload, disable, adversely affect or modify the operation of any computer hardware, software or code including to shut down or deny users access to all or any part of a relevant system or environment; or otherwise impair the reliability of any information held on a relevant system or environment (whether by re-arranging, altering or erasing data in whole or in part or otherwise), and includes Trojan horses, viruses, bots, bugs, spyware, file corruption, worms, logic bombs, backdoors, disabling code, key-loggers, ransomware, hijackers, rootkit and other similar things.

**Modern Slavery** means

- (a) any conduct involving the use of any form of slavery, human trafficking, exploitation, forced labour practices or servitude to exploit children or other persons taking place in operations and/or supply chains;
- (b) any other slavery-like practices; and
- (c) any conduct constituting an offence or as otherwise defined as Modern Slavery, under Modern Slavery Law.

**Modern Slavery Law** means any primary or delegate or subordinate legislation (and any binding or non-binding guidelines issued by any entity or person so authorised under Modern Slavery Law), applicable in Australia, any State or Territory and otherwise applicable to Client from time to time with respect to reporting on or addressing the risks of Modern Slavery, including with respect to business operations and supply chains and with respect to related purposes including but not limited to the *Modern Slavery Act 2018* (Cth); the *Modern Slavery Act 2018* (NSW); the *Modern Slavery Act 2015* (UK); and Division 270 of the *Criminal Code Act 1995* (Cth).

**Modifications** means all enhancements, modifications, updates, improvements, configurations and derivative works.

**Moral Rights** means any moral rights including the rights described in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other Law), that exist or that may come to exist, anywhere in the world.

**Party** means a Party to this Agreement and **Parties** means both of them.

**Permitted Purpose** has the meaning given in clause 2.1.

**Permitted User** means:

- (a) Representatives of InfoTrack who are authorised by InfoTrack to exercise the rights granted to InfoTrack in clause 3;
- (b) Representatives of Supplier who have been allocated User Credentials to access InfoTrack Connect in accordance with this Agreement; or
- (c) persons or entities expressly identified as such in an accepted Supply Request.

**Personal Information** means 'personal information' as that term is defined in the relevant and applicable Privacy Laws, and which is disclosed by the Discloser to the Recipient or otherwise collected by the Recipient from the Discloser in connection with this Agreement.

**Personnel** means employees, agents, independent personal services contractors, or any other staff or personnel acting on behalf of or at the direction of the relevant Party.

**Privacy Laws** means all relevant or applicable privacy or data protection laws relating to the collection, use, processing, disclosure, storage or granting of access to the Personal Information applicable to the relevant Party and includes (only to the extent the relevant Parties are subject to it or required to comply with it under this Agreement) and includes the *Privacy Act 1988* (Cth), the Australian Privacy Principles, the *Spam Act 2003* (Cth) and the *Do Not Call Register Act 2006* (Cth) and any State or Territory acts and regulations applicable in the relevant State or Territory; and all applicable binding privacy codes or policies.

**Recipient** means the Party in possession or control of Confidential Information or Personal Information (as applicable) disclosed to it by the other Party (or its Representatives) in connection with this Agreement.

**Regulator** means any third party body or agency having regulatory or supervisory authority over any part of the business or affairs of the relevant Party through the operation of applicable Laws; and includes the Australian Prudential Regulation Authority, and the Office of the Australian Information Commissioner.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Representative** of a Party means any of its Personnel, officers, directors, contractors and subcontractors, associates and representatives.

**Supplier API** means Supplier's application programming interface for Supplier Systems, which is a set of functions and procedures that allows the exchange of data between InfoTrack and Supplier.

**Supplier Data** means any data, information, text, content or other materials (including Personal Information and Confidential Information) which is supplied to InfoTrack or its Affiliates by Supplier or Supplier's Representatives in connection with this Agreement; but for clarity, does not include: any InfoTrack Materials supplied to Supplier in connection with this Agreement; any materials already held by InfoTrack prior to any supply by Supplier to InfoTrack; InfoTrack Data; any material that independently

comes into the possession of InfoTrack (other than through Supplier or Supplier's Representatives); and any metadata generated by InfoTrack in the operation of the InfoTrack Environment.

**Supplier Environment** means any hardware, software, information, networks, systems, databases or other technology solutions owned or controlled by Supplier (in the ordinary course of operating its business), including Supplier System.

**Supplier Materials** means all materials, works, rights and Intellectual Property Rights held, owned or licensed by Supplier or its Affiliates (current or future) in the usual course of business including any Supplier Products, Supplier Environment, Documentation, and any metadata generated by Supplier in the operation of Supplier Environment or supply of Supplier Products, and includes all Modifications to those materials.

**Supplier Products** means all the data products and services to be offered by Supplier for sale on InfoTrack Connect.

**Supplier Terms** means the special terms and conditions applicable to the supply of Supplier Products to that Customer (which apply in addition to the Customer Terms) and which, for clarification, may include Third Party Supplier Terms.

**Supplier System** means the web-based online search platform owned and hosted by Supplier and which may be accessed by InfoTrack's Permitted Users for the purposes of receiving Supplier Products for InfoTrack Connect provided by Supplier or its Affiliates.

**Supply Request** means a request by Supplier for particular Supplier Products to be hosted and sold on InfoTrack Connect, via a supplier engagement form (and completed with all the details in) in the format provided by InfoTrack from time to time.

**Tax Invoice** has the meaning given to it in the GST Law.

**Taxable Supply** has the meaning given to it in the GST Law.

**Term** means the period commencing on the Commencement Date and ending on the termination or expiry of this Agreement.

**Territory** means any State or Territory in Australia.

**Third Party Supplier** means any entity, government department, agency or other organisation from which Supplier or any of its Affiliates licences some or all of the Supplier Data or Supplier Products.

**Third Party Supplier Terms** means conditions, restraints or limitations (as required by Third Party Suppliers) applicable to certain Supplier Products that are provided or licensed by Third Party Suppliers and resold by Supplier.

**User Credentials** means any usernames, passwords, tokens and other authentication credentials for use by a Permitted User for the purpose of accessing and using InfoTrack Connect.

## 24.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day in the place where the act, matter or thing is to be done, the act, matter or thing must be done on the next Business Day in that place;
- (c) a reference to dollars or \$ means Australian dollars;
- (d) a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (f) a reference to a clause, part, schedule, module, exhibit or attachment is a reference to a clause, part, schedule, module, exhibit or attachment of or to this Agreement;
- (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (h) a reference to any government department or agency includes any successor of that department or agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (k) references to the words 'include', 'includes' or 'including' are to be construed without limitation;
- (l) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (m) a reference to this Agreement includes the agreement recorded in this Agreement;
- (n) any schedules and attachments form part of this Agreement.