

INFOTRACK GENERAL TERMS

Currency

These InfoTrack General Terms are current from 5 April 2024.

Our Agreement

This agreement contains the terms and conditions that govern your access to and use of the InfoTrack Systems and any InfoTrack Products ordered and accessed through an InfoTrack System and is made between InfoTrack Pty Limited (**InfoTrack, We, Us or Our**) and you or the entity you represent (**Client, You or Your**) comprising the following parts:

- (a) the General Terms of this agreement;
- (b) any special Product Terms applicable to InfoTrack Products accessed or used by You as set out at <https://www.infotrack.com.au/legal/ProductTerms>;
- (c) any Third Party Terms applicable to InfoTrack Products accessed or used by You as set out at <https://www.infotrack.com.au/legal/ThirdPartyTerms>; and
- (d) (if relevant) the terms of any Order Form 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, except to the extent any of the provisions in the Third Party Terms are unfair contract terms under the Australian Consumer Law or otherwise illegal, unenforceable or invalid.

This Agreement will commence on the earlier of:

- (a) when You click an "I Accept" button or check box presented with these terms;
- (b) when You first use any of the InfoTrack Systems or InfoTrack Products;
- (c) when You sign an Order Form,

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

You represent to Us that You are lawfully able to enter into this Agreement and You have legal authority to bind the organisation or entity you represent (such as the company You work for).

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General Terms

1. TERM

- 1.1 **Term of Agreement:** This Agreement will commence on the Commencement Date and will continue until terminated or otherwise expires.

2. ACCESS, LICENCE AND RESTRICTIONS

- 2.1 **Access:** InfoTrack will provide access to the InfoTrack Systems to enable You to order and access InfoTrack Products via the InfoTrack System during the Term.
- 2.2 **Delivery:** In consideration for the Fees, InfoTrack will deliver the InfoTrack Products ordered by You via the InfoTrack System.
- 2.3 **Grant of Licence:** Subject to the restrictions set out in this clause 2, InfoTrack grants to You a non-exclusive, non-sublicensable, non-transferable, revocable licence for You (through Your Permitted Users) to:
- (a) access and use the InfoTrack System and the InfoTrack Products for the Permitted Purpose; and
 - (b) grant to Your End User clients a limited, exclusive, non-sublicensable, non-transferable personal licence (on a one-to-one basis) to use the InfoTrack Products subsisting in the Derivative Works in connection with the professional, transactional or advisory services You (or Your Permitted Users) were engaged to provide to that End User. This right only applies where You are authorised under a Permitted Purpose to create Derivative Works using the InfoTrack Products,
- during the Term and strictly in accordance with the terms of this Agreement and all Laws.
- 2.4 **Duration of Licence:** The licence granted by InfoTrack to You under clause 2.3 will immediately come to an end:
- (a) in respect of the InfoTrack Systems, upon the termination or expiry of this Agreement; and
 - (b) in respect of the InfoTrack Products, upon the earlier of the completion of the Permitted Purpose or expiry of the Term.
- 2.5 **Users:** You warrant and agree that You:
- (a) will (and will ensure that Your Permitted Users) will only use and access the InfoTrack System and InfoTrack Products for the Permitted Purpose(s), in compliance with the terms of this Agreement and in accordance with all applicable Laws.
 - (b) will restrict access to any InfoTrack Systems and InfoTrack Products solely to Your Permitted Users; and
 - (c) You are responsible and remain fully liable for the acts and omissions of Your Permitted Users and Representatives in connection with this Agreement.
- 2.6 **Licence Restrictions:** Except as expressly permitted under this Agreement, You agree to ensure that neither You nor any Permitted User will not (nor attempt to):
- (a) **Permitted Purpose:** use the InfoTrack System or InfoTrack Products for any purposes other than the Permitted Purpose;
 - (b) **No Third Party Benefit:** use the InfoTrack Products on behalf of or for the benefit of any third party;
 - (c) **User Credentials:** share any User Credentials or otherwise enable unlawful access to the InfoTrack System or InfoTrack Materials by any other person (whether simultaneously or independent of You);
 - (d) **Disclaimers:** remove, alter or deface any registered or unregistered trademark, logo, copyright notices, disclaimers or other proprietary notice appearing on or in any InfoTrack Products or InfoTrack Materials;
 - (e) **Trade Marks:** adversely affect or jeopardise the rights of InfoTrack (or its Representatives) 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 of the InfoTrack System to use the InfoTrack Products;
 - (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 (save where reasonably necessary to use or access the InfoTrack Materials for the Permitted Purpose as set out in an Order Form);
 - (k) **Direct Marketing:** use the InfoTrack Products in any way in connection with Direct Marketing;
 - (l) **Off-shore Disclosure:** transfer, store, disclose or make available the InfoTrack Products outside of the Territory;
 - (m) **Competition:** use the InfoTrack Materials or InfoTrack Systems in any way that competes with InfoTrack's business or the InfoTrack Products offered by InfoTrack.
 - (n) **Misuse:** use the InfoTrack Materials or InfoTrack Systems in any way that would or may:
 - (i) constitute a misuse of any person's Confidential 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;
 - (iii) damage the reputation or goodwill of InfoTrack or otherwise be misleading, deceptive or defamatory; or
 - (iv) be intended to avoid incurring Fees or minimise the applicable Fees payable,(Each, a **Non-Permitted Purpose**).

3. PROVISION OF SERVICES

- 3.1 **Delivery:** InfoTrack will deliver the InfoTrack Products via the InfoTrack System.
- 3.2 **InfoTrack Obligations:** InfoTrack warrants that it will use reasonable commercial endeavours to provide access to the InfoTrack System and InfoTrack 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 Laws that apply to the InfoTrack Systems and InfoTrack Products supplied under this Agreement.
- 3.3 **User Credentials:** InfoTrack will provide User Credentials to You to allow access to the InfoTrack System.
- 3.4 **Affiliates:** You acknowledge and agree that:
- (a) the InfoTrack Systems or InfoTrack Products may be provided by any InfoTrack Affiliate; and
 - (b) the Client Data may be disclosed to InfoTrack's Affiliates in connection with this Agreement,
- provided that InfoTrack remains solely responsible for the provision of the InfoTrack Products and InfoTrack Systems and security of the Client Data in accordance with this Agreement. For the purposes of this clause, any references to InfoTrack in this Agreement are read as references to InfoTrack and any relevant InfoTrack Affiliate.

4. SERVICE VARIATIONS

- 4.1 **Service Variations:** Subject to clause 4.3, InfoTrack reserves the right to, at any time during the Term:
- (a) modify the method of supply and delivery of, or access to, the InfoTrack Products;
 - (b) to change or discontinue any feature or functionality of the InfoTrack System or InfoTrack Products for any reason and at any time;
 - (c) amend or vary the terms of this Agreement from time to time by providing at least 30 days' notice in writing to You;
 - (d) amend the Third Party Terms from time to time where directed or required by the Third Party Supplier or to otherwise comply with InfoTrack's agreement with a relevant Third Party Supplier by providing reasonable notice in writing to You;
 - (e) suspend or otherwise deactivate Your, and each of the relevant Permitted Users', access to the InfoTrack System and any InfoTrack Products, where there is an actual or suspected systems or security concern associated with the continued access by those users;
 - (f) make temporarily unavailable or otherwise suspend access to the InfoTrack System or InfoTrack Products where reasonably necessary for: scheduled or emergency maintenance; system updates; other upgrades; or any other changes to the InfoTrack Systems and/or InfoTrack Products, and
- where possible will provide reasonable notice to You via the InfoTrack System.
- 4.2 **Reservation of Rights:** InfoTrack reserves the right to, at any time during the Term
- (a) store any and all data using cloud storage technology, at InfoTrack's discretion; and
 - (b) gather analytics in relation to any and all activity on the InfoTrack Systems, use of the InfoTrack Products and Client Data for internal purposes (subject to clause 17), including for purposes such as billing, gauging interest and identifying usage patterns.
- 4.3 **Termination:** Where InfoTrack exercises its rights under clause 4.1 above, You may terminate this Agreement immediately by notice in writing to InfoTrack within 60 days of the change taking effect. For clarity, You may simply cease using your InfoTrack account at any time without the need to provide us with formal notice of termination (ie, leave the account open but unused).

5. CLIENT DATA

- 5.1 **Client Data:** You will provide Client Data reasonably required to enable InfoTrack to provide the InfoTrack System and InfoTrack Products.
- 5.2 **Licence to Use Client Data:** Without limiting clause 5.4, You grant InfoTrack a non-exclusive, non-sublicensable (except as provided under clause 5.3) licence to use Client Data during the Term for the limited purpose of providing the InfoTrack Systems and InfoTrack Products to You. InfoTrack must not use Client Data for any other purpose without Your prior written consent.
- 5.3 **Sublicence:** You consent to and agree that InfoTrack may sub-license and disclose the Client Data to Third Party Suppliers and subcontractors during the Term for the limited purpose of providing the InfoTrack Systems and InfoTrack Products to the Client.
- 5.4 **Licence to Use Property Attributes:** You grant to InfoTrack a non-exclusive, irrevocable, perpetual, world-wide, royalty free unlimited right to use, reproduce, modify, adapt, publish, make derivative works from, and sub-licence any Property Attributes provided or supplied to InfoTrack by You.

6. CLIENT ACKNOWLEDGEMENTS AND OBLIGATIONS

- 6.1 **Client Acknowledgements:** You acknowledge and agree:
- (a) InfoTrack is entitled to rely on the accuracy and completeness of the Client Data as provided by the Client and, unless expressly required otherwise, InfoTrack has no obligation to verify the accuracy or completeness of the Client Data;
 - (b) that some InfoTrack Products rely upon data and/or services provided or licensed to InfoTrack by Third Party Suppliers and which are subject to Third Party Terms or other terms imposed upon InfoTrack by the Third Party Supplier; and
 - (c) InfoTrack enters into the Third Party Terms for its own benefit and the benefit of, and as agent for, each Third Party Supplier and, as between You and InfoTrack, InfoTrack may enforce the Third Party Terms.
- 6.2 **User Credentials:** You acknowledge and agree 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 the InfoTrack Systems and InfoTrack Products;
 - (b) You must (and must ensure that each of Your 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 17; and
 - (ii) ensure that the User Credentials are not disclosed to or used by any person other than an authorised Permitted User (**Unauthorised Person**); and
 - (c) You are solely responsible for all use of the User Credentials by Permitted Users and any Unauthorised Person (including all InfoTrack Products ordered using the User Credentials) and InfoTrack is entitled to rely upon any order for InfoTrack Products received through the use of the User Credentials.
- 6.3 **Client Obligations:** You acknowledge and agree You must (and must ensure Your Representatives & Permitted Users as appropriate):
- (a) provide InfoTrack with any Client Data and sufficient written instructions as reasonably required to enable InfoTrack to provide the InfoTrack Systems and InfoTrack Products;
 - (b) comply with any Third Party Terms;
 - (c) implement the security measures specified under clause 19.2; and
 - (d) comply with the terms of this Agreement, (together, the Client Obligations).
- 6.4 **Exclusion of liability:** InfoTrack is not liable for any failure to provide the InfoTrack Systems or InfoTrack Products to the extent that such failure is due to Your failure to fulfil any of Your Client Obligations.

7. FEES AND INVOICES

- 7.1 **Tax Invoice:** InfoTrack must issue to You a Tax Invoice that complies with the GST Law.
- 7.2 **Payment of Fees:** You must pay to InfoTrack all undisputed Fees in accordance with the terms of this Agreement.
- 7.3 **Payment Terms:** Subject to clause 7.13(a), You acknowledge and agree that the payment of any Tax Invoice issued by InfoTrack to You will fall due 7 days after the date of issue of the relevant Tax Invoice, unless otherwise agreed between the Parties.
- 7.4 **Credit Card:** InfoTrack reserves the right to charge a reasonable transaction fee where you elect to pay by credit card, which will be displayed at point of sale or otherwise agreed in writing. InfoTrack may elect to waive the transaction fee where you pay by direct debit, in its sole discretion.
- 7.5 **InfoTrackGO:** You must pay for the InfoTrack Products ordered on the InfoTrackGO website at the time of placing an order. If the order is fulfilled and the credit card payment defaults, InfoTrack reserves the right to: (i) attempt to retry a payment up to three times; or (ii) suspend access to Your InfoTrackGO account until such amounts are received in full.
- 7.6 **Third Party Suppliers:** A significant portion of the InfoTrack Products are reliant on Third Party Products sourced from Third Party Suppliers and are subject to the Third Party Supplier Terms and the Authority Fees. InfoTrack does not have any ability to control the Authority Fees charged by Third Party Suppliers, or any changes to those Authority Fees. In order to continue providing the InfoTrack Products, InfoTrack may be required to amend, from time to time, the Fees in order to reflect changes made to the Authority Fees, as set by the Third Party Suppliers.
- 7.7 **Authority Fee Increases:** Noting clause 7.5, InfoTrack may increase the Fees at any time solely as necessary to pass through and take into account any Authority Fee increases or additional charges imposed by its Third Party Suppliers. If InfoTrack is required to increase the Fees under this clause 7.6, we will use reasonable endeavours to provide You with reasonable advanced written notice of the new Fees payable for particular InfoTrack Products. However, this may not always be possible, such as where Third Party Suppliers only provide InfoTrack with little (or no) notice of adjustments to the Authority Fees. The adjusted Fees will also be present at the point of sale before completion of Your order.
- 7.8 **Fee Review:** Without limiting clause 7.6, InfoTrack may increase the Fees as reasonably determined by InfoTrack by providing You with reasonable advanced written notice of the proposed Fee adjustment. The adjusted Fees will also be presented at the point of sale before completion of Your order.
- 7.9 **Termination:** If you object to any increase to Fees notified by InfoTrack under clauses 7.6 or 7.7, you may elect to terminate this Agreement immediately by providing notice in writing from receipt of such notice and within 60 days of the change taking effect. For clarity, and subject to clause 13.4, You may simply cease using your InfoTrack account at any time without the need to provide us with formal notice of termination (ie, leave the account open but unused).
- 7.10 **Cancelled Orders:** InfoTrack reserves the right to retain or charge the Fees where an order for an InfoTrack Product is cancelled, or the search result is NIL where InfoTrack has reasonably incurred costs, charges or Authority Fees. Each refund is assessed based on its own merits and requires the relevant Third Party Supplier to refund the applicable Authority Fee.
- 7.11 **Disputes:** Any failure by You to object to a Tax Invoice prior to the due date for payment or actual payment will not prejudice Your right to dispute the amount of the Tax Invoice.
- 7.12 **Interest:** Any undisputed Fees not paid when due will be subject to interest equal to a rate that is 5% per annum above the cash rate last published by the Reserve Bank of Australia, and will be calculated on a daily basis.
- 7.13 **Payment Default:** You acknowledge and agree that:
- (a) where You have a history of late payment or non-payment of your Tax Invoices by the due date, as a condition of keeping Your InfoTrack account open, InfoTrack may require that You are converted to direct debit by credit card with payment to be automatically deducted on the date of the Tax Invoice;
 - (b) if any Fees are due and payable but not received by InfoTrack within thirty (30) days from the date on which such amounts fall due, then, at InfoTrack's sole discretion, InfoTrack may:
 - (i) terminate this Agreement and close your account immediately; and
 - (ii) transfer the right to receive, recover or pursue such amounts to a third party and You will be liable to InfoTrack and/or the third party for any associated costs until such time as such amounts are paid in full to such third party;
 - (c) InfoTrack may, in its sole discretion acting reasonably, notify a commercial credit reporting agency, such as Creditor Watch Pty Ltd (ABN 80 144 644 244) in circumstances where:
 - (i) any Fee is not paid within sixty (60) days from the date on which such amounts fall due;
 - (ii) the amount owed is over \$150.00; and

- (iii) InfoTrack has requested payment of the debt either in person (for example by phone call) or by Notice in writing and provided You with Notice of InfoTrack's intent to notify the credit reporting agency if such payment is not received.

8. GST

- 8.1 All Fees quoted under this Agreement will be exclusive of GST, unless expressly stated otherwise.
- 8.2 Subject to prior receipt of a valid Tax Invoice, You 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.
- 8.3 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.
- 8.4 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.
- 8.5 **Survival of Clause:** This clause 8 survives the termination of this Agreement.

9. WARRANTIES, ACKNOWLEDGEMENTS AND EXCLUSIONS

- 9.1 **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) 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;
 - (c) it is lawfully able to grant any relevant licences to the other Party as provided for under this Agreement.
- 9.2 **InfoTrack Warranties:** Further to the mutual warranties set out in clause 9.1, InfoTrack warrants that:
- (a) it will not knowingly introduce any errors, faults or other imperfections to the InfoTrack Systems or InfoTrack Products;
 - (b) the supply of the InfoTrack Systems and InfoTrack Products by InfoTrack for the Permitted Purpose:
 - (i) is not contrary to any applicable Laws as they relate to InfoTrack; and
 - (ii) will not infringe the copyright of any third party.
- 9.3 **Client Warranties:** You warrant that, in respect of the Client Data provided or disclosed by or on behalf of You to InfoTrack in connection with this Agreement:
- (a) InfoTrack's use of the Client Data in accordance with this Agreement will not infringe any applicable Laws; and
 - (b) InfoTrack's use of the Client Data in accordance with this Agreement will not infringe the copyright of any third party;
 - (c) You have obtained or will obtain (prior to disclosure to InfoTrack) all required and necessary consents and authorisations for InfoTrack to collect, use, hold, process and disclose the Client Data in accordance with this Agreement.
- 9.4 **Client Acknowledgements:** Except to the extent You are a Consumer and the following are Consumer Guarantees that cannot be excluded by Law, You acknowledge and agree that, to the fullest extent permitted by Law:
- (a) the mutual warranties set out in clause 9.1 and the InfoTrack warranties set out in clause 9.2 are in lieu of any other warranties by InfoTrack, express or implied;
 - (b) all terms, conditions or warranties are expressly excluded, and InfoTrack expressly disclaims any warranties that the InfoTrack Systems and InfoTrack Products: will meet Your requirements; are fit or suitable for Your intended purpose or use; will be compatible with, or suitable for use with, Your own software or applications; will be error-free, correct, accurate, complete, reliable, secure, current, up-to-date or otherwise (including any InfoTrack Products sourced from Third Party Suppliers), or that the statistical methodology on which any of the InfoTrack Products are derived use appropriate or accurate assumptions;
 - (c) InfoTrack does not provide any legal advice or legal services, accounting or other professional services advice by providing You access to the InfoTrack Products;
 - (d) access to the InfoTrack Systems and InfoTrack Products is made available to You, and Your Permitted Users subject to the terms and conditions set out in this Agreement, as well as any applicable InfoTrack Product Terms and Third Party Terms as provided from time to time; and
 - (e) You are solely responsible for ensuring, and must satisfy Yourself, that the InfoTrack Systems and InfoTrack Products licensed to You meet Your needs; and
 - (f) the InfoTrack Systems or InfoTrack Products may include links, integrations, or connections to third-party websites, applications, or other services. Such connections do not imply review or endorsement by us. You and (where applicable) Your End User client proceed at your own risk to a Third Party Supplier website, application, or service.
- 9.5 **Remedies:** In the event of breach by InfoTrack of clause 9.2, any warranties implied by Law or any breach of the Consumer Guarantees (where You are a Consumer), then InfoTrack's liability will at InfoTrack's sole discretion be limited to InfoTrack:
- (a) using commercially reasonable efforts to modify, correct or provide access to the relevant InfoTrack Systems or InfoTrack Products;
 - (b) re-supplying the InfoTrack Products to You;
 - (c) reimbursing to You the relevant Fees paid by You (where applicable) for the provision of the InfoTrack Products; and/or
 - (d) waiving payment of any Fees for the re-supply of the InfoTrack Products to You.

10. INDEMNITIES

- 10.1 **Indemnities:** Subject to clause 11.2, the first Party (**Indemnifying Party**) will indemnify and keep indemnified the other Party from and against any Losses or third party Claims (including any reasonable legal costs) reasonably incurred or suffered by the other Party arising directly from:
- (a) any infringement by the Indemnifying Party or its Representatives upon any person's Intellectual Property Rights or Moral Rights, misuse of any person's Confidential Information in connection with this Agreement or breach of clause 16 (Intellectual Property Rights);
 - (b) any wilful, criminal or fraudulent act or omission of the Indemnifying Party or its Representatives in breach of this Agreement; or
 - (c) 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.
- 10.2 **Third Party Claims:** Where clause 10.1 applies and the Claim being indemnified against is a Claim made by a third party against You:
- (a) InfoTrack reserves the right to defend a Claim (or any Losses claimed, as may be applicable); and
 - (b) where InfoTrack exercises this right, You warrant and agree that You will:
 - (i) give InfoTrack sole control of the defence and settlement of the Claim (but InfoTrack may not settle any Claim unless it unconditionally releases You of all liability);
 - (ii) provide all assistance reasonably requested by InfoTrack (and InfoTrack will cover Your reasonable third party costs of doing so); and
 - (iii) take all reasonable steps to mitigate Your Losses in respect of any such Claim.

11. LIMITATION OF LIABILITY

- 11.1 **Liability Cap:** Subject to clauses 11.2, 11.3, 11.4 and 11.5 and to the extent permitted by Law, and excluding the obligation to pay Fees, 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 InfoTrack by You under this Agreement solely within the 12 months immediately preceding the date of any such Claim or Loss.
- 11.2 **Liability under the Indemnity:** Subject to clauses 11.4 and 11.5 and to the extent permitted by Law, each Party's maximum aggregate liability to other Party or any other person (including any Affiliate of the Party) for all and any Claims or Losses (in aggregate):
- (a) arising under clause 10.1(a), will be limited to \$1 million per Claim and per annum; and
 - (b) arising under clauses 10.1(b) or 10.1(c) will not be limited.
- 11.3 **Consequential Loss:** To the maximum extent permitted by Law (but excluding any event set out in clauses 10.1), neither Party will be liable to the other Party for any Consequential Loss arising out of or in connection with this Agreement.
- 11.4 **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 any of its Affiliates caused or contributed to the relevant Loss suffered or incurred by the first Party.
- 11.5 **General Exclusions:** Notwithstanding any other term of this Agreement, InfoTrack will have no liability whatsoever to You or any of Your Affiliates for any Loss or Claim caused directly or indirectly by:
- (a) the failure by You to comply with any Law or codes governing the conduct of Your business;
 - (b) the inability of You, Your Representatives, Affiliates or any Permitted User to access or use the InfoTrack Systems or InfoTrack Products for any reason;
 - (c) a failure by You, Your Representatives, Affiliates or any Permitted User to comply with Your Client Obligations under this Agreement;
 - (d) the act or omission of any person not within InfoTrack's reasonable control;
 - (e) equipment, data, Client Data or services supplied to InfoTrack by You or any third party;
 - (f) the Third Party Products, Third Party Suppliers, Third Party Supplier websites, or any linked or integrated third party websites, content, services or applications; or
 - (g) a Force Majeure Event.
- 11.6 **Survival of Clause:** This clause 11 is intended to survive the termination of this Agreement.

12. SUSPENSION OF ACCESS

- 12.1 **Suspension:** InfoTrack may, by notice in writing, suspend this Agreement in whole or in part (by reference to specified InfoTrack Products) where:
- (a) it is directed to do so by a Third Party Supplier;
 - (b) InfoTrack becomes aware of, or reasonably suspects that, You are in breach of the Third Party Terms;
 - (c) InfoTrack becomes aware of, or reasonably suspects that, You are in breach of clause 19.2 (Client Security Measures); or
 - (d) under clauses 13.2, 13.3, or 15.2.
- 12.2 **Notice:** When exercising its rights under this clause, InfoTrack will use reasonable commercial endeavours to provide as much notice as possible in the circumstances.

13. TERMINATION

- 13.1 **Termination for Convenience:** Either Party will be entitled to terminate this Agreement by providing at least 30 days' written notice to the other Party. For clarity, You may simply cease using your InfoTrack account at any time without the need to provide us with formal notice of termination (ie, leave the account open but unused).

- 13.2 **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 of any relevant brand of the other Party.
- 13.3 **Termination or suspension for non-payment:** InfoTrack may terminate or suspend (at its election) this Agreement with immediate effect where You owe to InfoTrack undisputed amounts that have been outstanding for more than 30 days, provided that InfoTrack has provided to You a written demand for payment.
- 13.4 **Termination or suspension for non-use:** InfoTrack reserves the right to suspend or terminate Your account if You have not used or accessed the InfoTrack System or ordered any InfoTrack Products in the previous 2 years.

14. CONSEQUENCES OF TERMINATION

- 14.1 **Obligations:** Upon termination or expiry of this Agreement for any reason:
- (a) You must immediately cease using all relevant InfoTrack Systems, InfoTrack Products and any other InfoTrack Materials in Your possession or control;
 - (b) You must make payments of any outstanding Fees owed to InfoTrack under this Agreement for any InfoTrack Products provided by InfoTrack prior to the date of termination;
 - (c) InfoTrack must immediately cease using any Client Data and Your Intellectual Property Rights (but excluding any Third Party Product);
 - (d) subject to clause 14.1(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 InfoTrack Materials (in the case of You), Client Materials (in the case of InfoTrack), any other materials or records containing Confidential Information of the other Party in its possession or control;
 - (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 14:
 - (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; and/or
 - (iii) any documents or materials contained in an archived backup of the respective Party's relevant software (or other server environment),to be kept in accordance with each Party's respective confidentiality obligations as set out in clause 17 of this Agreement and not used for any purpose other than as permitted above.
- 14.2 **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.

15. FORCE MAJEURE

- 15.1 **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.
- 15.2 **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.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 **InfoTrack IP:** You acknowledge and agree that:
- (a) all Rights, title and interests (including all Intellectual Property Rights) in or arising out of the InfoTrack Materials (including any modifications made to the InfoTrack Materials) are owned by and will immediately and absolutely vest in, InfoTrack, its Affiliates or Third Party Suppliers on and from creation;
 - (b) the InfoTrack System and InfoTrack Products are made available to You on a limited access basis, and except to the extent of any right expressly granted under this Agreement, You do not acquire any Right, title, interest or any Intellectual Property Rights to the InfoTrack Materials through this Agreement.
- 16.2 **Client Data:** InfoTrack acknowledges and agrees that You are and remain the sole and exclusive owner of all Rights, title and interests (including all Intellectual Property Rights) in Client Data.
- 16.3 **Derivative Works:** Where the Client is authorised in the Permitted Purpose to create new material or works using the InfoTrack Materials (**Derivative Work**), then, unless otherwise specified:
- (a) subject to InfoTrack's underlying ownership of the InfoTrack Materials, the Client owns the Derivative Work upon creation; and
 - (b) for clarity, in respect of the InfoTrack Materials incorporated in such Derivative Works:
 - (i) InfoTrack's (or its Affiliates or Third Party Suppliers) owns and continues to own all Rights, title and interests (including all intellectual Property Rights) to those InfoTrack Materials; and

- (ii) the InfoTrack Materials subsisting in a Derivative Work are subject to the licence granted under clause 2.3 and this Agreement.

17. CONFIDENTIALITY

- 17.1 **Mutual obligations of confidence:** Subject to clause 17.2, 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 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.
- 17.2 **Permitted use and disclosure:** Notwithstanding clause 17.1, and subject to clause 17.3 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.
- 17.3 **Conditions of Disclosure:** Before using or disclosing the Confidential Information under clause 17.2, the Recipient must:
- (a) notify the Discloser promptly upon becoming aware that a disclosure may be required under clauses 17.2(c) or 17.2(d);
 - (b) limit the disclosure of any Confidential Information permitted under clause 17.2 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 17.2 is subject to obligations of confidentiality in accordance with the terms of this Agreement.
- 17.4 **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 17):
- (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
- 17.5 **Survival:** All obligations of confidence set out in this clause 17 are intended to continue in full force and effect even after the termination of this Agreement.

18. PRIVACY

- 18.1 **Compliance with Privacy Laws:** Each Party warrants and agrees that it and its Representatives will comply with all Privacy Laws in connection with any Personal Information collected, used, disclosed, stored or received in connection with this Agreement.
- 18.2 **Disclosure of Personal Information:** Each Party warrants that any Personal Information that the Discloser discloses to the Recipient or its Representatives under this Agreement has been collected, used, processed, held and disclosed in accordance with the relevant requirements of the Privacy Laws.
- 18.3 **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 18 or any applicable Privacy Law.
- 18.4 **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.

19. DATA PROTECTION & SECURITY

- 19.1 **InfoTrack Obligations & Safeguards:** InfoTrack will use commercially reasonable efforts to establish, implement and maintain security controls in respect of any InfoTrack Environment used to deliver the InfoTrack Products, or that stores, handles, processes or transmits Client 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 the InfoTrack Systems and InfoTrack Products and any other materials supplied by InfoTrack to You under this Agreement do not contain any publicly known Malware; and
 - (c) that are designed to protect Client Data that is stored, handled or processed by InfoTrack from accidental or unlawful destruction, loss, alteration, or unauthorised disclosure or access.
- 19.2 **Client Security Measures:** You must establish, maintain and enforce appropriate security measures designed to ensure that:
- (a) Client Data and any other materials provided by You or Your Representatives to InfoTrack do not contain any publicly known Malware;
 - (b) no Unauthorised Persons can obtain unauthorised access to the InfoTrack Systems or InfoTrack Products or otherwise use the InfoTrack Systems or InfoTrack Products for purposes not authorised or permitted by the terms of this Agreement (including for Non-Permitted Purposes).
- 19.3 **Client Warranties:** You warrant and agree that You 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 an InfoTrack System, the InfoTrack Products and the 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.

20. AUDIT RIGHTS

- 20.1 **Client Obligation:** You agree to maintain all financial, operational and technical records in respect of Your access to the InfoTrack Environment, the InfoTrack Systems and InfoTrack Products accessed, received or used under or in connection with this Agreement, and other such records reasonably related to Your compliance with this Agreement (**Client Records**), and to ensure that all such Client Records are (i) complete and up to date; and (ii) kept in manner which permits them to be conveniently and properly audited for a period of at least seven (7) years after the expiry or termination of this Agreement.
- 20.2 **InfoTrack Obligation:** InfoTrack agrees to maintain all financial, operational and technical records required to evidence accuracy of the warranties given by InfoTrack under this Agreement (**InfoTrack Records**), and to ensure that all such InfoTrack Records are: (i) complete and up to date; and (ii) kept in manner which permits them to be conveniently and properly audited for a period of at least seven (7) years after the expiry or termination of this Agreement.
- 20.3 **Notice of Audit:** Not more than once in any 12 month period (unless InfoTrack has reason to suspect that You are in breach of this Agreement), InfoTrack may give reasonable written notice (not less than 5 Business Days) to You that it requires an audit of the Client Records to be undertaken via a questionnaire.
- 20.4 **Conduct of Audit:** If InfoTrack requires an audit to be carried out, you must:
- (a) answer all questions to the best of Your knowledge and belief;
 - (b) provide copies of or access to the Client Records reasonably requested for the purposes of carrying out the audit; and
 - (c) provide all reasonable cooperation and assistance to InfoTrack as reasonably necessary to facilitate the conduct of the audit.
- 20.5 **Treatment of Records:** InfoTrack must treat as confidential any Client Records or any other Confidential Information that is disclosed, inspected, or accessed by InfoTrack during an audit.
- 20.6 **Third Party Suppliers:** You acknowledge and agree that:
- (a) You must comply with any reasonable request from a Third Party Supplier to exercise the audit rights granted to InfoTrack under this clause for the audit and inspection of the Client Records or InfoTrack Records relating to Your use of the InfoTrack Systems or InfoTrack Products, compliance with this Agreement and any relevant Third Party Terms;
 - (b) the Third Party Supplier may appoint InfoTrack to carry out an audit or inspection of the Client Records on its behalf;
 - (c) subject to clause 20.5, InfoTrack may provide to a Third Party Supplier any relevant Client Records or InfoTrack Records held or discovered by InfoTrack or otherwise reasonably requested by a Third Party Supplier; and
 - (d) except where it would cause You to breach any applicable Laws, You must take reasonable steps to ensure that You do not disclose or advertise that a Third Party Supplier has conducted an audit in respect of this Agreement.

21. GENERAL

- 21.1 **Assignment:** A Party must not assign any of its rights or obligations under this Agreement, without the prior written consent of the other Party.
- 21.2 **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.
- 21.3 **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.
- 21.4 **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.

- 21.5 **No agency or partnership:** Except as specifically provided in this Agreement or by express written agreement between the Parties, the relationship between the Parties is that of principal and independent contractor and no Party is an agent, Representative or partner of any other Party by virtue of this Agreement.
- 21.6 **No authority to act:** Except as specifically provided in this Agreement or by express written agreement between the Parties, 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.
- 21.7 **Third Party Products:** When you order InfoTrack Products via the InfoTrack System that incorporate Third Party Products, You appoint InfoTrack as your broker and agent to act on Your behalf and acknowledge and agree that InfoTrack incurs Authority Fees in its capacity as a paying agent on your behalf and may invoice you for such Authority Fees (if applicable). You acknowledge that InfoTrack may charge you a service fee for acting as your broker and agent. You authorise InfoTrack, as your broker and agent, to do everything reasonably necessary for it to carry out its obligations under this Agreement in accordance with your lawful instructions. This clause does not apply to any verification of identity products or services unless expressly stated.
- 21.8 **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.
- 21.9 **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 You:
- (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 the InfoTrack Systems or InfoTrack Products following the written notification of any variation to the terms of this Agreement.
- 21.10 **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.
- 21.11 **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.

22. DEFINITIONS AND INTERPRETATION

22.1 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.

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).

Authority Fee means the fees and charges payable by InfoTrack to Third Party Suppliers for Third Party Products.

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).

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.

Client 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 You or Your Representatives in connection with this Agreement; but for clarity, does not include: any InfoTrack Materials supplied to You in connection with this Agreement; any materials already held by InfoTrack prior to any supply by You to InfoTrack; any material that independently comes into the possession of InfoTrack (other than through You or Your Representatives); and any metadata generated by InfoTrack in the operation of the InfoTrack Environment or provision of the InfoTrack Products.

Client Obligations means the obligations set out in clause 6.3.

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 other Party 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 or Third Party Suppliers to InfoTrack (or their Related Bodies Corporate);
- (d) trade secrets, know-how, specifications, inventions, processes or initiatives which are of a confidential nature;
- (e) in relation to InfoTrack, the InfoTrack Materials; and
- (f) in relation to You, any Client Data,

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.

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

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

Derivative Work means a new original work or other works or materials created by You based wholly or partly upon (whether by using, incorporating, adapting, altering, modifying or other nature) the InfoTrack Materials.

Direct Marketing includes the use and/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 and/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 and/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 InfoTrack guides, manuals, user instructions and written specifications regarding the InfoTrack Products or the InfoTrack Systems and any marketing material regarding the InfoTrack Products or the InfoTrack System.

End User means Your clients by whom You have been engaged to provide professional, legal, transactional or advisory services on a one-to-one basis.

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 InfoTrack for the InfoTrack Products notified in the InfoTrack System (as varied from time to time) and includes the Authority Fees.

Force Majeure means any circumstances, acts or omissions 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 unavailability or unavailability, war, terrorism or civil disturbance, or impossibility of obtaining material and/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 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 the InfoTrack Systems.

InfoTrack Materials means all materials, works, Rights and Intellectual Property Rights held, owned or licensed by InfoTrack or its Affiliates (current or future) in the usual course of business including any Third Party Product, InfoTrack Confidential Information, InfoTrack Products, the InfoTrack Environment, Documentation, and any metadata generated by InfoTrack in the operation of the InfoTrack Environment or supply of the InfoTrack Products and any other material accessed by You in the use of the InfoTrack Products or InfoTrack Systems, and includes all Modifications to those materials.

InfoTrack Products means all the products, services, data, information, statistics, analytics, results, reports, images, Property Attributes and Third Party Products that are produced, collected, held or acquired by InfoTrack or its Affiliates and licensed or supplied to You (or its Representatives) by or on behalf of InfoTrack under this Agreement, but excludes Client Data.

InfoTrack System means the web-based online search platforms owned and hosted by InfoTrack and which may be accessed by Your Permitted Users for the purposes of ordering InfoTrack Products provided by InfoTrack or its Affiliates and includes:

- (a) the InfoTrack search website located at <https://www.infotrack.com.au/>; and
- (b) the InfoTrackGO website located at <https://infotrackgo.com.au/>.

Initial Term means the "Initial Term" set out in an Order Form.

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.

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, outgoing, 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.

Modifications means all enhancements, modifications, updates, improvements, configurations and derivative works relating to or in connection with the InfoTrack Materials.

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.

Non-Permitted Purpose has the meaning set out at clause 2.6 and any other restriction on use specified in an Order Form or the Third Party Terms.

Notifiable Data Breach means a Data Breach or any other data breach that is notifiable to a Regulator under applicable Privacy Laws in respect of Personal Information which is disclosed to or received by a Party under or in connection with this Agreement and includes an 'Eligible Data Breach' as defined under clause 26WE of the *Privacy Act 1988* (Cth).

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

Permitted Purpose means, subject always to any limitations set out in these General Terms:

- (a) In respect of the InfoTrack Systems: for the purposes of ordering and accessing InfoTrack Products; and
- (b) In respect of the InfoTrack Products:
 - (i) Your internal business purposes in connection with the preparation of and provision of professional advisory or legal services to Your End User clients, being a Derivative Work;
 - (ii) the meaning set out in any relevant Product Terms or Third Party Terms (where relevant and applicable). For clarity, any relevant terms or definitions in the Product Terms and Third Party Terms will take precedence to the extent of any inconsistency.

Permitted User means Your Representatives who:

- (a) are required by You to access the InfoTrack System and/or InfoTrack Products but only to the extent needed to enable You to achieve the Permitted Purpose;
- (b) have been allocated User Credentials to access the InfoTrack System in accordance with this Agreement; or
- (c) persons or entities expressly identified as such in an Order Form.

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 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.

Product Terms means the product specific terms set out at <https://www.infotrack.com.au/legal/ProductTerms> applicable to any InfoTrack Products as identified in the relevant 'Product Terms'.

Property Attributes means the physical, environmental and other observable factual data and information relating to a real property including: living area and layout, number of bedrooms, bathrooms, floor levels, number of car spaces and type, fixtures, utility services, condition (including repairs, hazards or defects), access, construction type and materials, roof type, land size, property aspect, land and yard feature, spatial data, property improvements (such as buildings, pool, garage), and year built or renovated.

Recipient means the Party in possession or control of Confidential Information and/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.

Renewal Term means the "Renewal Term" set out in an Order Form.

Representative means a Party and any of its Personnel, officers, directors, contractors and subcontractors, associates, representatives and any other person who acts for or on behalf of that Party.

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

Order Form means any Order Form entered into by the Parties pursuant to the terms of this Agreement that sets out the terms applicable to the access and use of identified InfoTrack Systems and InfoTrack Products.

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 of this Agreement and ending on the termination or expiry of this Agreement.

Territory means any State or Territory in Australia.

Third Party Product means data, information, Property Attributes, reports, images, plans, documents or other materials of any nature which is supplied to, collected, licensed or acquired by InfoTrack and which InfoTrack uses, licenses, resells or otherwise exploits for commercial purposes.

Third Party Supplier means any entity, government department, agency or other organisation from which InfoTrack or any of its Affiliates licences the Third Party Product.

Third Party Terms means conditions, restraints, disclaimers or limitations (as required by Third Party Suppliers) applicable to certain InfoTrack Products that are provided or licensed by Third Party Suppliers and resold by InfoTrack and are either:

- (a) presented to You for acceptance at the point of sale;
- (b) located here <http://www.infotrack.com.au/legal/ThirdPartyTerms> and as updated by InfoTrack from time to time and notified to You in writing; or
- (c) provided with any relevant Third Party Product supplied by InfoTrack.

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

22.2 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.