

INFINITE EDGE

# Terms of Service

Managed services, IT support, goods and related services

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## PART ONE

# General

## 1. Definitions and interpretation

1.1 In these Conditions, the Rate Schedule and every Quote, Order, Plan, contract or other arrangement for the supply of Goods or Services by Us, the following words have the following meanings:

**“After Hours”** means 5:00pm to 8:00am Monday to Friday, and all day Saturday, Sunday and Public Holidays;

**“Business Hours”** means 8:00am to 5:00pm Melbourne time, Monday to Friday, excluding Public Holidays;

**“Client”, “You” or “Your”** means the person or entity that seeks or obtains a Quote for, or that orders or receives, Goods or Services from Us, and includes the person named on an Order, the person who places an Order, and any person on whose behalf an Order is placed, and their successors and permitted assigns;

**“Committed Term”** means the minimum term for a Plan set out in the applicable Quote or Plan Schedule;

**“Conditions”** means these terms and conditions;

**“Goods”** means any goods sourced or supplied by Us, including computer hardware and Software, and any goods supplied in connection with the Services;

**“GST”** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**“Order”** means any order placed by You with Us for Goods or Services, in any form;

**“Period”** means a period agreed between Us and You during which particular Services will be provided;

**“Plan”** means an ongoing arrangement between Us and You for Services and/or Goods, including as set out in a Plan Schedule;

**“Plan Schedule”** means the document setting out the key terms, inclusions, exclusions and pricing applicable to a Plan, as varied in accordance with clause 9;

**“Public Holidays”** means any day that is a public holiday throughout Victoria, other than a bank holiday;

**“Quote”** means a quote or proposal provided to You by Us;

**“Rates”** means the hourly rates and other charges for Goods and Services set out in the Rate Schedule, a Plan, a Plan Schedule, a Quote or these Conditions;

**“Rate Schedule”** means Our schedule of rates, charges and conditions, as varied in accordance with clause 12;

**“Service Request”** means a request for service, such as adds, moves, changes and technical assistance;

**“Services”** means the provision of any services by Us, including Work, advice and recommendations;

**“Software”** includes software and any installation, update, associated software and related services;

**“Us”, “Our” or “We”** means The Trustee for Infinite Edge Trust ABN 26 349 322 772, trading as Infinite Edge and its successors and permitted assigns;

**“Work”** means anything We do, provide, customise, produce or acquire in connection with the Services, including testing, troubleshooting, installation, configuration, consulting, scoping, planning, documenting and quoting.

1.2 In these Conditions, unless the contrary intention appears: the singular includes the plural and vice versa; a reference to legislation includes amendments and replacements; headings and bold text are for convenience only and do not affect interpretation; references to dollars are to Australian dollars; references to time are to Melbourne, Australia time; a reference to a person includes a corporation, partnership, trust or authority; “includes” means includes without limitation; and a reference to insolvency includes bankruptcy, winding up, liquidation, administration and any analogous event.

## 2. Application of these Conditions and order of precedence

2.1 These Conditions apply to, and are incorporated in, every Quote, Order, Plan, contract or other arrangement for the supply of Goods or Services by Us to You.

2.2 To the extent of any inconsistency between documents, the following order of precedence applies, each prevailing over those after it: (a) any written agreement signed by both parties; (b) the applicable Plan Schedule; (c) the accepted Quote or Order; (d) these Conditions.

2.3 If any provision of these Conditions is invalid or unenforceable, it is severed and the remaining provisions continue in full force.

## 3. Term

3.1 The Committed Term for a Plan is set out in the Quote or Plan Schedule and begins on the first day of the month in which You sign or approve the Quote, unless the Quote states otherwise.

3.2 We will remind You in writing at least sixty (60) days before the end of the Committed Term.

3.3 After the Committed Term, the Plan continues on a month to month basis on the then current terms until it is terminated under clause 4 or a new Committed Term is agreed in writing.

## 4. Termination

4.1 Either party may terminate a Plan or these Conditions by written notice if the other party: (a) breaches a material term and fails to remedy the breach within thirty (30) days of written notice describing it; or (b) ceases to conduct business, or suffers an insolvency event, to the extent termination on that ground is permitted by law.

4.2 During any month to month continuation under clause 3.3, either party may terminate the Plan for any reason on ninety (90) days written notice.

4.3 If You terminate a Plan during the Committed Term other than under clause 4.1, You must pay an early termination charge equal to the remaining monthly service fees for the unexpired portion

of the Committed Term, less any direct costs We avoid because of the early termination. The parties agree this is a genuine pre-estimate of Our loss, reflecting pricing, onboarding and other value provided on the basis of the full Committed Term.

4.4 On termination, We will assist You in the orderly transition of the Services to You or another provider, and You will pay for that assistance at the then current Rates.

4.5 Termination does not affect accrued rights. Clauses 21, 29, 30, 31 and 32 survive termination.

## 5. Entire agreement and representations

5.1 These Conditions, together with the documents listed in clause 2.2, record the entire agreement between the parties about their subject matter.

5.2 No employee or agent of Ours is authorised to make any representation, warranty or promise about the Goods or Services except as recorded in those documents. Nothing in this clause limits any rights You have under the Australian Consumer Law.

## 6. Notices

6.1 Notices under these Conditions must be in writing and sent by email: to You, at the email address You last notified to Us; and to Us, at [marty@infiniteedge.com.au](mailto:marty@infiniteedge.com.au).

6.2 An emailed notice is taken to be received when sent, unless sent after 5:00pm or on a non-business day, in which case it is taken to be received at 9:00am on the next business day, provided the sender does not receive a delivery failure message.

## 7. Governing law and dispute resolution

7.1 These Conditions are governed by the laws of Victoria, and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

7.2 Before starting court proceedings (other than for urgent interlocutory relief or recovery of undisputed debts), a party must give the other written notice of the dispute, and senior representatives of each party must meet within ten (10) business days and attempt in good faith to resolve it.

7.3 If the dispute is not resolved within twenty (20) business days of the notice, either party may refer it to mediation in Melbourne administered by the Resolution Institute under its mediation rules, before commencing proceedings.

## 8. Assignment

8.1 You may not assign Your rights or obligations under these Conditions without Our prior written consent, which will not be unreasonably withheld.

8.2 We may assign or novate these Conditions to a related body corporate, or in connection with a sale of Our business, by giving You written notice.

## 9. Variation of these Conditions

9.1 We may vary these Conditions or a Plan Schedule by giving You at least thirty (30) days written notice. The current version of these Conditions will also be published on Our website.

9.2 If a variation materially adversely affects You, You may terminate the affected Plan by written notice before the variation takes effect, without incurring an early termination charge.

9.3 If You continue to receive Goods or Services after a variation takes effect, You are taken to have accepted it. The version of these Conditions current at the date of an Order applies to that Order.

## PART TWO

# Goods and services

## 10. Quotes

**Validity:** a Quote for Services or a Plan is valid for thirty (30) days, and a Quote for Goods is valid for seven (7) days, unless the Quote states otherwise. We may extend validity in writing.

**Invitation:** a Quote is an invitation to You to place an Order. A binding contract forms when We accept Your Order under clause 11.

**Changes:** if You request changes after a Quote is issued, We may re-quote or charge for the changed work at the prevailing Rates.

**Goods pricing:** prices for Goods are based on supplier cost at the date of the Quote. If a supplier price or availability changes before We accept Your Order, We will notify You of the adjusted price or a substitute of equal or superior quality, and proceed only with Your approval.

**Stock and returns:** We do not hold inventory; Goods are ordered on receipt of Your Order. If You cancel or return Goods, a restocking fee may apply, and refunds for Goods are subject to the supplier accepting the return. Nothing in this paragraph limits Your rights under the Australian Consumer Law.

**Delivery estimates:** delivery timeframes are estimates provided by suppliers and are not guaranteed dates. Freight is charged in addition unless the Quote states otherwise.

## 11. Orders

**Placing Orders:** You may place an Order by signed order form, by email approval, or through Our web-based approval system, quoting the relevant Quote where applicable and including Your full legal name, ABN or ACN, and address.

**Authority:** absent actual knowledge to the contrary, We may rely on the apparent validity of an Order. A person who signs, sends or approves an Order warrants that they are authorised to do so on behalf of the person for whom the Order is placed.

**Acceptance:** an Order takes effect when it is accepted by Us in writing. For Goods, We may require payment in cleared funds, including freight and any in-transit insurance, before ordering or releasing the Goods. Services under a Plan are invoiced in accordance with the Plan and clause 29.

**Credit checks:** You consent to Us undertaking credit reference checks for the purpose of assessing credit terms, in accordance with applicable privacy and credit reporting law.

**Cancellation:** an accepted Order may only be cancelled with Our written agreement. Goods despatched by a supplier often cannot be cancelled or returned.

**Processes:** You agree to cooperate with Our reasonable processes and procedures as advised from time to time.

## 12. Pricing and Rates

12.1 All Rates and amounts are exclusive of GST and other taxes and government charges unless stated otherwise in writing.

12.2 You must pay for Goods and Services at the Rates in the applicable Plan, Plan Schedule, Quote or Rate Schedule.

12.3 Where a Plan or Quote fixes pricing for a stated period, We will honour that pricing for that period. Otherwise, We may vary Rates by giving You at least thirty (30) days written notice.

12.4 CPI adjustment. We may increase the Rates for monthly recurring Services once per calendar year in line with the most recently published All Groups Consumer Price Index for Melbourne (ABS). We will give You at least thirty (30) days written notice of the change, the effective date and the new Rates. Continued receipt of the Services after the effective date constitutes acceptance.

12.5 Renewal review. At the commencement of any renewal or new Committed Term, Rates for recurring Services may be adjusted by the greater of the CPI movement described in clause 12.4 and three (3) per cent.

12.6 Call-out fees, where applicable, are set out in the Rate Schedule and depend on where the Services are provided.

12.7 Where We process a return, refund or cancellation for You, We may charge a return or cancellation fee reflecting Our reasonable administration costs, and may deduct it from any refund.

12.8 You must reimburse material out of pocket expenses reasonably incurred in providing the Services, including travel, accommodation, tolls and parking. We will obtain Your prior written authorisation before incurring material expenses.

12.9 Where a charge is calculated on time increments, the whole increment is charged even if work occupies part of it.

12.10 Pre-paid blocks of Service must be paid in advance, are consumed in the increments set out in the Rate Schedule, apply only during the agreed Period, and unused amounts do not roll over and are not refundable.

12.11 Line of business application support. Support for Your third party line of business applications is included only where the applicable Plan Schedule says so. Where it is not included, We will scope the support required during onboarding, and any additional monthly cost will be agreed with You in writing before it applies, and reviewed at quarterly business reviews. We may act as an intermediary with Your application vendors. Where a request exceeds the anticipated scope, for example API work, website issues or large-scale application changes, We will notify You promptly, and the work will be scoped and quoted as a project before it proceeds.

## 13. Services and Plans

13.1 We currently offer the Services and Plans described in the Rate Schedule and applicable Plan Schedules. Plan Schedules are provided to clients participating in a Plan, and a copy of the current Rate Schedule is available on request.

13.2 Changes to the scope or terms of a Plan are made in accordance with clause 9.

## 14. Subcontracting

14.1 We may subcontract any of the Services, and remain responsible to You for the Services under these Conditions.

## 15. Delivery, title and risk

**Delivery:** We will use reasonable endeavours to despatch Goods by the estimated date but are not liable for delay caused by circumstances beyond Our reasonable control, including supplier and carrier delays. You must be available to accept delivery at Your nominated address during Business Hours unless otherwise arranged.

**Risk:** risk in Goods passes to You on delivery to Your nominated address. You must insure the Goods from delivery.

**Retention of title:** until We receive full payment in cleared funds for all amounts You owe Us on any account: title in the Goods remains with Us; You hold the Goods as bailee for Us; You must store them so they are identifiable as Ours and must not sell them except in the ordinary course of Your business; and if You sell them, You hold the proceeds on trust for Us in a separate account to the extent of the amount owing.

**Repossession:** if You fail to pay when due, We may, to the extent permitted by law and after reasonable notice where practicable, enter premises where the Goods are reasonably believed to be stored and repossess them, and You must pay Our reasonable costs of doing so.

**PPSA:** You acknowledge that these Conditions create a security interest in the Goods and their proceeds for the purposes of the Personal Property Securities Act 2009 (Cth), and You agree to do anything reasonably required by Us to register and perfect that security interest.

## 16. Returns and claims

**Supplier terms:** Goods are supplied subject to the returns and claims policies of the relevant manufacturer or supplier. Customised Goods, specially procured Goods and Goods sourced from overseas or from suppliers no longer trading may not be returnable.

**Inspection:** You must inspect Goods promptly on delivery and notify Us in writing within seven (7) days of any matter You wish to claim about. Returnable Goods must be returned in original condition and packaging, except where the Goods are faulty or not as described.

**Costs:** You must pay the reasonable costs of returns unless the manufacturer or supplier bears them, or the return arises from Our error or a failure of a consumer guarantee. Nothing in this clause limits Your rights under the Australian Consumer Law.

## 17. Nature of IT services

17.1 You acknowledge that information technology work can involve diagnosis by trial and error, and that tests, troubleshooting, advice and recommendations made in good faith may prove incorrect or need revision, particularly when curing an existing problem. We will act with due care and skill and make reasonable endeavours to provide sound advice and effective work.

17.2 Reasonable assistance limits. Under a Plan, We are obliged to provide the assistance described in the applicable Plan Schedule, and otherwise what is reasonable in the circumstances, normally being work during Business Hours within any time We have estimated or allowed for the Work. Additional work is chargeable at the applicable Rates unless otherwise agreed.

17.3 Where We recommend third party Goods, You acknowledge that suitability, compatibility and vendor behaviour involve factors outside Our control, and that customising Goods for a particular purpose can be a substantial project in itself. You are responsible for Your decisions whether to follow recommendations and whether to purchase, subject to Our obligation to act with due care and skill, clause 21, and the Australian Consumer Law.

17.4 You will follow Our reasonable instructions for testing and troubleshooting, and We will allocate the resources We reasonably consider appropriate to resolving outstanding problems.

## 18. Force majeure

18.1 Neither party is liable for failure or delay in performing its obligations, other than an obligation to pay money, to the extent caused by events beyond its reasonable control, including supplier failure, transport stoppage, fire, flood, natural disaster, epidemic, war, riot, or action of a public authority.

18.2 The affected party must notify the other and use reasonable endeavours to mitigate. If a force majeure event continues for more than sixty (60) days, either party may terminate the affected Order or Plan by written notice, and You must pay for Goods and Services supplied up to termination.

## 19. Product specifications

19.1 Manufacturers may vary dimensions and specifications after the Order date. We may supply Goods with minor variations, or substitute Goods of equal or superior quality at no more than the quoted price, with Your approval where the change is material.

## 20. Warranties

20.1 Goods are covered by the applicable manufacturer's warranty, generally for parts and labour on a return to depot basis, and warranty claims are administered by the manufacturer. We will provide reasonable assistance in directing warranty claims.

20.2 Nothing in this clause excludes, restricts or modifies any consumer guarantee or other right You have under the Australian Consumer Law, including guarantees that Goods are of acceptable quality and that Services are provided with due care and skill.

## 21. Liability

21.1 Nothing in these Conditions excludes, restricts or modifies any right or remedy You have under law that cannot be excluded, restricted or modified, including under the Australian Consumer Law.

21.2 Subject to clause 21.1, all terms, conditions, warranties and guarantees that would otherwise be implied into these Conditions are excluded.

21.3 Where legislation implies a term that cannot be excluded but liability for its breach can be limited, Our liability for that breach is limited, at Our option: for Goods, to replacing or repairing the Goods or paying the cost of replacement or repair; and for Services, to resupplying the Services or paying the cost of resupply.

21.4 Subject to clause 21.1, neither party is liable to the other for loss of profits, revenue, business, goodwill or anticipated savings, or for indirect or consequential loss, however caused.

21.5 You are responsible for maintaining backups of Your programs and data, and subject to clause 21.1 We are not liable for loss of programs or data, except to the extent the loss is caused by Our failure to provide backup Services expressly included in Your Plan Schedule.

21.6 Subject to clauses 21.1 and 21.3, Our total aggregate liability to You arising out of or in connection with these Conditions, whether in contract, tort (including negligence), statute or otherwise, is limited to the total fees paid by You to Us under the applicable Plan or engagement in the twelve (12) months preceding the event giving rise to the liability. This limit does not apply to liability that cannot be limited at law, or to liability arising from fraud or wilful misconduct.

21.7 Each party's liability to the other is reduced proportionately to the extent that the other party's acts or omissions caused or contributed to the loss.

## 22. Errors and omissions

22.1 We take care to ensure prices and descriptions are accurate. If a Quote or Order contains a genuine error or omission, We may, acting reasonably, correct it or rescind the affected contract by written notice, and Our liability in that event is limited to refunding amounts You have paid for the affected Goods or Services not supplied.

## PART THREE

## Our responsibilities

### 23. Privacy

23.1 We collect, hold, use and disclose personal information in accordance with the Privacy Act 1988 (Cth) and the Australian Privacy Principles, for the purposes of providing Quotes, Goods and Services, administering Our relationship with You, verifying information You provide, and related purposes.

23.2 We may disclose personal information to suppliers, contractors and service providers to the extent needed for those purposes, and otherwise will not disclose it without consent unless authorised or required by law.

23.3 Our privacy policy, available at [www.infiniteedge.com.au](http://www.infiniteedge.com.au), explains how You can access and correct personal information and how to make a privacy complaint.

### 24. Our website

24.1 Information on Our website is provided in good faith. To the extent permitted by law and subject to clause 21.1, We do not warrant that the website is complete, current, uninterrupted or free from viruses, and We do not endorse linked third party sites or products.

### 25. Insurance

25.1 We maintain professional indemnity insurance and public and products liability insurance appropriate to the Goods and Services We provide. A certificate of currency is available on request.

## PART FOUR

## Your responsibilities

### 26. Lodging Service Requests

26.1 So that Service Requests are tracked, owned and resolved, You agree to lodge them through the channels set out in Appendix A, and not directly with individual technicians.

### 27. Access to systems, sites and people

27.1 You agree to give Us timely access to the equipment, systems, sites and people reasonably required to provide the Services.

27.2 You authorise Us to install remote monitoring and management software on Your equipment so that We can monitor system status, receive alerts, provide remote support, and view or control devices for support purposes. This may require devices to remain powered on outside Business Hours as reasonably requested. We will use that access only for providing the Services, and in accordance with clause 23 and clause 32.

## 28. Third party authorisations

28.1 Where We deal with Your third party providers on Your behalf, such as Your internet provider, You are responsible for giving those providers the authorisations they require so We can deal with them freely.

## 29. Payment, late payment and default

29.1 Invoices are due and payable within the terms stated on the invoice, by direct debit, credit card or direct deposit as set out in the invoice. Unless otherwise agreed in writing, recurring Plan fees are payable monthly in advance by direct debit.

29.2 If an invoice remains unpaid seven (7) days after its due date, We may, after giving You written notice, suspend the supply of Goods and Services until payment is made. We may end the suspension conditions on a payment arrangement being kept.

29.3 If You default in payment and do not remedy the default within fourteen (14) days of written notice, all amounts owing for Goods and Services already supplied become immediately due and payable.

29.4 You must pay Our reasonable costs of recovering overdue amounts, including collection costs and legal costs on a solicitor and own client basis.

29.5 We may charge interest on overdue amounts, calculated daily from the due date until payment, at the rate fixed from time to time under the Penalty Interest Rates Act 1983 (Vic).

29.6 Payments received are applied first to costs of recovery, then to interest, then to the oldest outstanding debts.

29.7 We may require reasonable security for amounts owing as a condition of continued supply, and You agree to promptly execute documents reasonably required to create and perfect that security.

## 30. Non-solicitation of personnel

30.1 Each party agrees that, during a Plan or engagement and for twelve (12) months afterwards, it will not directly solicit for employment or engagement the other party's employees or contractors who were materially involved in the Services, without the other party's written consent. General public advertising not targeted at those personnel is not solicitation.

30.2 The parties agree that the loss caused by a breach of clause 30.1 is difficult to quantify, and that the breaching party will pay the other fifty (50) per cent of the relevant person's total annual remuneration package as liquidated damages, being a genuine pre-estimate of recruitment, training and lost productivity costs, or such lesser amount as a court determines to be enforceable.

## 31. Software and intellectual property in Work

31.1 You are responsible for holding and storing licences for Software You supply or direct Us to install, and You warrant You are authorised to use that Software. You are responsible for claims arising from unauthorised use of Software You supply.

31.2 Unless otherwise agreed in writing, all intellectual property rights in custom software and other Work created by Us remain Our property, and We grant You a non-exclusive, perpetual, royalty-free licence to use the Work delivered to You for Your internal business purposes.

## 32. Confidentiality and intellectual property warranty

32.1 You warrant that confidential information and intellectual property You provide to Us belongs to You or You are authorised to provide it.

32.2 Each party must keep the other's confidential information confidential, use it only for the purposes of these Conditions, and not disclose it except to personnel and advisers who need it, as required by law, or with the other party's consent. This obligation does not apply to information that is public other than through a breach, and survives termination.

32.3 All intellectual property rights in Our methods, tools, documentation and know-how remain Ours.

## APPENDIX A

### Service Request lodgement process

Lodge Service Requests through any of the following channels:

- Web portal (preferred): [www.infiniteedge.com.au/submit-request](http://www.infiniteedge.com.au/submit-request)
- Email: [support@infiniteedge.com.au](mailto:support@infiniteedge.com.au)
- Phone: 03 9988 1832

Include a short description of the problem, screenshots of any errors, and, if lodging by phone or from an external email address, your name, company and return contact details.

Please do not lodge Service Requests directly with individual technicians; it takes them away from the issue they are resolving and Your request will not be tracked.

Service Requests outside Business Hours must be lodged through the same channels. After hours response and any urgent contact path are as set out in Your Plan Schedule; work performed outside Business Hours is otherwise charged at the applicable After Hours Rates.