

STANDARD TERMS

1. Definitions and interpretation

1.1 In this Agreement:

- (a) **Additional Services** means any services, including but not limited to any services provided on a time and materials basis, provided to the Client which are not expressly included in the Proposal and have not been included in the Client Investment, will be charged to the Client in accordance with the Rate Card, unless otherwise agreed to by the Parties in writing.
- (b) **Consequential loss** means any loss, which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into the Agreement, including any loss arising from an interruption to a business or activity, revenue, profits, anticipated savings, opportunity to profit and grow the business, and any special, punitive or exemplary damages. Loss of data to the extent that such loss of data is caused directly by Crofti is excluded.
- (c) **Crofti** means Crofti Pty Ltd ACN 169 326 514, and any benefit, exclusion from liability or indemnity provided to Crofti, is provided also to includes its directors, employees, associates and contractors.
- (d) **Exceptional Circumstances** means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under the Agreement. Such circumstances include, but are not limited to, the following: (a) adverse changes in government regulations; (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster; (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and/or (d) acts or omissions of any Network Providers (such as internet, telephony or power provider). For clarity, any act or omission of a party's subcontractor or agent is not outside of the control of that party.
- (e) **Excluded Event** means the following, and will not be covered by the Support Services:
 - (1) Crofti Scheduled Maintenance (Clients will be provided with at least 2 Business Days prior Notice before any Scheduled Maintenance is undertaken by Crofti);
 - (2) performance issues relating to firmware updates, upgrades, revisions to third party software or hardware;
 - (3) events of Exceptional Circumstances; and
 - (4) faults, service outages or disruptions caused by the wilful or negligent acts of the Client and its Personnel, the Server Host(s) or third-party equipment, software or Networks.
 - (5) **Proposal** means the document prepared by Crofti and agreed in writing or executed by Client which

describes the various Services to be provided by Crofti, details of the scope of the Services required to be provided by Crofti to the Client, as well as the licence limitations and Service Fees applicable to the Services for this Agreement, as amended by the Parties from time to time in writing.

2. Entire Agreement

2.1 Understandings and Prior Negotiations

This Agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of the Agreement; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

2.2 Order or Priority

The following are comprised in the Agreement:

- (a) these Standard Terms;
- (b) all Crofti Policies provided on our website as amended from time to time at www.crofti.com.au/policies;
- (c) the Proposal; and
- (d) any other document forming part of the Agreement as agreed to in writing by the Parties, together the "**Agreement**".

2.3 Conflicting Terms

Where any inconsistency arises between any of the documents, for interpretation, the following will be the order of precedence:

- (a) the Proposal;
- (b) these Standard Terms including the Schedule;
- (c) the Crofti Policies; and then
- (d) any other document forming part of the Agreement as agreed to in writing by the Parties.

3. Term

3.1 Client Services Agreement term

The term of this Agreement:

- (a) commences on the Commencement Date; and
- (b) subject to a further rollover term under clause 3.2, continues until the Expiry Date, unless otherwise terminated earlier (**Term**).

3.2 Ongoing Agreement

- (a) This Agreement will rollover in successive agreements of one month, unless terminated by one of the parties. This Agreement shall automatically renew for a further period equivalent to the initial Term, on the Standard Terms of this Agreement.
- (b) In the event the Client does not wish to renew the Agreement, they must serve an End of Term Notice no later than 30 days prior to expiry of the current Term, confirming in writing that they do not wish to renew the Agreement for a further term ("End of Term Notice"). This may be provided by letter, facsimile and/or email so

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long as it is in writing and confirmation of receipt is provided.

3.3 End of Term Notice

If a party provides a valid End of Term Notice to the other party, the Term shall expire on the date that is 30 days after the last day of the Term during which the End of Term Notice was given.

3.4 Services after expiry

If part of a Proposal fixes a Term and, for whatever reason, Crofti is engaged by the Client to perform Services after expiry of the Term, or termination, then the Standard Terms will apply to the Services performed, and such Services (performed at Crofti's sole discretion) will be time costed and billed to the Client.

4. Services

4.1 Services

Crofti agrees to provide the Services to the Client during the Term in accordance with these Standard Terms, the Proposal and any Crofti Policies as generated or amended from time to time.

4.2 Relationship

The relationship between the Parties is purely that of an independent contractor, and neither Party will make any claim to the other party or any third party suggesting a relationship of employer and employee, agency or partnership.

4.3 Scope

- (a) The Services to be provided by Crofti are those detailed in the Proposal and any updated Crofti Policies as amended from time to time.
- (b) Additional Services must be agreed in writing with Crofti, prior to being performed.
- (c) Crofti may perform urgent work for the Client when requested without such work being agreed in writing between the Parties prior, on the basis that the Client undertakes to pay for all urgent services requested. Where urgent work is requested, Crofti will use best endeavours to give an approximate quote for the work, but cannot be held to this quote, given urgent work is generally performed in a situation where the Client needs protection from a virus, hacking, damage from a third party or employee, or some other urgent situation; and the likely work or costing cannot always be ascertained before exploratory work has been performed (at the Client's cost).
- (d) Training may also be provided by Crofti and this will be considered an Additional Service, to be agreed in writing prior to commencement, and paid in accordance with clause 6.
- (e) Unless agreed between the parties in writing, Crofti is not responsible for the maintenance or upkeep of the Client's internet sites subject of the Services, unless such work forms part of the Proposal or is requested and agreed as Additional Work.

4.4 Proposal

- (a) For clarity, the Proposal includes these Standard Terms, and will specify, among other things:
 - (1) a description of the Services;
 - (2) the Site(s) where the Services will be performed;

- (3) whether the Services will be performed remotely or in person, or a combination of both;
- (4) the number of User(s);
- (5) the number of User Seat(s);
- (6) any services or costs which are specifically excluded in addition to those already excluded in the Crofti Policies;
- (7) pricing for the Services and any urgent work or services required outside standard business hours; and
- (8) any special terms.

- (b) The Proposal may be reviewed from time to time to adjust for increase or decrease of Users and change in Client needs, however the contract may only be varied by agreement in writing between the parties.

4.5 Service Standards

- (a) Crofti will use reasonable endeavours to meet the service standards set out in the Crofti Policies as amended from time to time.
- (b) The Client will ensure that it and all of its Users are familiar with the Crofti Policies, and comply strictly with the Policies at all times to aid in protection of the Client's systems and data.
- (c) Where the Client or a User of the Client does not comply with the Policies, and this causes urgent work and/or Additional Work, Crofti will use best endeavours to work with the Client to rectify the situation urgently at the Client's cost.

4.6 Subcontractors

Crofti may delegate the performance of any of the Services to any of its subcontractors, in its discretion.

5. General obligations

5.1 Client obligations

In addition to any other Client requirements in the Proposal, the Client warrants that it will:

- (a) ensure that its User(s) have the relevant training to enable interaction with Crofti in performing the Services;
- (b) use reasonable endeavours to ensure Crofti is kept informed of changes to the Client's business operations relevant to these Standard Terms to allow effective planning and scheduling of resources by Crofti;
- (c) use reasonable endeavours to, at its own expense:
 - (1) carry out initial error diagnosis and, where applicable, take appropriate corrective action in repeat of known errors;
 - (2) report errors and faults promptly and provide information, including documentation relevant to the diagnosis of such errors and faults;
 - (3) promptly apply all information, documentation and actions advised by Crofti;
 - (4) comply strictly with all Crofti Policies as amended from time to time;
 - (5) keep Crofti informed of any extraordinary use made of the products and, if required, supply relevant detailed information on such uses. This material shall be used only for the purpose of diagnosing faults and shall be treated as confidential; and

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- (6) recreate the circumstances in which a report fault occurred or provide screen captures;
- (d) provide Crofti will all reasonable information and access to its premises, Sites, computer and network systems in order for Crofti to provide the Services;
- (e) use reasonable endeavours to promptly notify Crofti of any event or incidents that is likely to or will impact on the provision of the Services or any other obligation of Crofti (including but not limited to Exceptional Circumstances);
- (f) pay the Client Investment and any other fees and outlays invoiced in accordance with these Standard Terms and the Proposal;
- (g) pay Crofti's reasonable time and expenses incurred in the provision of such Support Services onsite where requested by the Client or required in an urgent situation as determined by Crofti;
- (h) use reasonable endeavours to comply with the back-up procedures recommended by Crofti; and
- (i) comply with any reasonable direction of Crofti, in order for Crofti to perform the Services and comply with its obligations under the Agreement.

5.2 Service limitations

The Client acknowledges and agrees that:

- (a) Crofti's ability, and obligation, to provide the Services is subject to the Client complying with its obligations under clause 5.1 and any other limitation or exclusion set out in this Client Services Agreement and, if applicable, any applicable Proposal;
- (b) unless otherwise expressly included in a Proposal, the cost of consumables, replacement parts, hardware, software, network upgrades and any associated services are outside the scope of the Services and are the full responsibility of the Client; and
- (c) unless otherwise expressly included in a Proposal, any server upgrades, network device upgrades and software upgrades are outside the scope of this Agreement.

5.3 Crofti obligations

At its own expense, Crofti will at all times use best endeavours to:

- (a) carry out initial error diagnosis and, where applicable, take appropriate corrective action;
- (b) report errors and Faults; and
- (c) promptly notify the Client of any event or incidents that is likely to or will impact on the provision of the Services or any other obligation of Crofti (including but not limited to Exceptional Circumstances);
- (d) work with the Server Host(s) as necessary to rectify issues contemplated in clause 5.3(a). However, Crofti will not be responsible for acts or omissions of the Server Host(s) or for providing any new software or new hardware (other than as set out in the Proposal or otherwise agreed in writing between the parties) to carry out its obligations under clause 5.3(a); and
- (e) comply with any reasonable direction of the Client for the purpose of enabling the Client to comply with its obligations under the Agreement.

6. Service Fee and Payment

6.1 Payment

- (a) The Client warrants that it will pay Crofti the Client Investment by close of business on the due date provided on the invoice for such Services, or in the Proposal on the conditions specified therein.
- (b) Where no due date is specified, payment terms will be 7 days from provision of the Services, Additional Work or goods.

6.2 Late or non-payment of invoices

If the Client fails to pay an invoice within the time period referred to in clause 6.1, Crofti may:

- (a) charge the Default Interest Rate as advised at the relevant time by the Queensland Law Society, from the date for payment until the date payment clears in Crofti's account; and/or
- (b) restrict or suspend the Services in accordance with clause 7 below.

7. Suspension

7.1 Suspension

Crofti may temporarily suspend (in part or in whole) the provision of the Services to the Client if:

- (a) Crofti is legally required to do so;
- (b) an event of Exceptional Circumstance occurs, which affects or may affect Crofti's ability to provide the Services;
- (c) such suspension is as a result of late or non-payment in accordance with clause 6.3; or
- (d) if the Client is otherwise in breach of the Agreement.

7.2 Effect of suspension

Suspension will not affect any right which accrue prior to, or after, suspension or the Client's obligations under these Standard Terms or in the Proposal, however during the suspended period, no Client Investment is payable given no Services will be performed.

8. Intellectual Property Rights

8.1 Client IP and Technology

- (a) The Client retains all rights to their intellectual property and technology at all times, and grants to Crofti a non-exclusive, non-transferable licence to use its Intellectual Property Rights in the Client technology during the Term, but strictly for the purposes of it performing the Services for the Client.

8.2 Crofti IP and Technology

- (a) Crofti retains all rights to their intellectual property and technology at all times, and grants the Client a non-exclusive, non-transferable, revocable, royalty free licence (subject to clause 6.1) to its Intellectual Property Rights in the Crofti technology, but only to the extent necessary for the Client to use any deliverable (which deliverable is expressly provided as part of the Services) embodying any such rights.

8.3 Provision and ownership of New IP

- (a) As may be applicable in the course of Crofti providing the Services to the Client, upon its creation all New IP will be:
 - (1) owned by, and vest in, Crofti;

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- (2) where applicable, licensed to the Client in accordance with clause 8.2.
- (b) The Client will take all necessary steps and execute all (or procure the execution of all) necessary documents to give effect to the assignment in sub-clause 8.3(a).

8.4 Prohibited activities

Each Party must not do or permit or omit to do any act which infringes the Intellectual Property Rights of the other Party (or its licensors).

8.5 Notification of infringement claim

Each Party must notify the other Party within 3 Business Days if it becomes aware of:

- (a) any actual or suspected infringement by a third party of a Party's Intellectual Property Rights; or
- (b) any actual or threatened Claim by a third party that its Intellectual Property Rights have or will be infringed by any act or omission by a Party in connection with the Agreement.

8.6 Indemnity

Each party is liable for, and agrees to indemnify, and keep indemnified, the other party from and against all Loss incurred or suffered in connection with any claim that the use of any Intellectual Property (IP) provided to the other party in accordance with this clause 8, infringes the Intellectual Property Rights of any third party.

9. Confidentiality & Privacy

9.1 Disclosure

- (a) A Party must not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- (b) Each Party must ensure that its employees and agents, and sub-contractors engaged for the purposes of the Agreement, do not make public or disclose the other Party's Confidential Information.
- (c) In particular, Crofti must ensure that all sub-contractors engaged for the purposes of the Agreement sign the Confidentiality Deed in Annexure 1 before providing any goods or services as subcontracted obligations under this Agreement.
- (d) A Party is not in breach of this clause 9.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- (e) Notwithstanding any other provision of this clause 9.1, the Parties may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (f) Each Party must on demand, return to the other Party any Confidential Information supplied by the other Party in connection with the Agreement.

9.2 Security and unauthorised access

- (a) Each Party must ensure that all information and materials of the other Party (or its agents or contractors) in the custody of that Party for purposes connected with the Agreement are protected at all times from unauthorised access or use by a third party, and from misuse, damage or destruction by any person.
- (b) Each Party must ensure compliance with all security regulations or procedures or directions as may be given

by the other Party from time to time relating to the Confidential Information or access to the other Party's Confidential Information.

9.3 Survival and indemnity

- (a) This clause survives the termination of the Agreement.
- (b) Each party agrees to indemnify, and keep indemnified, the other party in relation to all Loss it incurs as a result of the other party's breach of this clause 9, excluding Consequential Loss.

9.4 Privacy Laws

Each Party agrees to comply with all Privacy Laws in relation to any and all Personal Information that it collects from the other Party, has access to or is made available to it by the other Party in connection with the Agreement.

10. Liability

10.1 Exclusion of liability

- (a) To the extent permitted by Law, in no event will either Party be liable to the other for Consequential Loss or Loss suffered as a result of an Excluded Event even if that Party has been made aware of the possibility of such Consequential Loss or Excluded Event prior to entering into the Agreement.
- (b) Unless otherwise specified, neither Party is liable to third parties regarding, or arising out of or in connection with, the Agreement.
- (c) The Client acknowledges and agrees that Crofti is not liable to the Client for any Excluded Loss. For the purposes of this clause 10.1(c), "Excluded Loss" means any Loss suffered by the Client that is caused by any Server Host or a Server Host's employees or subcontractors.

10.2 Implied terms

- (a) To the full extent permitted by Law, any term which would otherwise be implied into the Agreement is excluded.
- (b) In the event any Law implies or imposes terms into the Agreement which cannot be lawfully excluded, such terms will apply, save that the liability of Crofti for breach of any such term will be limited in accordance with clause 10.3(a).

10.3 Limitation of liability

- (a) Re-performance
To the extent Crofti cannot exclude its Liability but it can be limited under the Australian Consumer Law, its Liability shall be limited (at the option of Crofti) to any one or more of the following:
- (1) re-supplying services to which the Liability relates or the supply of equivalent services; or
 - (2) reimbursing the Client (subject to clause 10.4) for paying someone else to supply the services which the Liability relates.
- (b) Subject to clause 10.4, Crofti's the liability for any loss or damage suffered or incurred by the other Party in connection with this Agreement is limited to the Fees paid by the Client to the Crofti under this agreement in the 6 months preceding the event giving rise to the liability.

10.4 Viruses

- (a) The Client must use all reasonable precautions to prevent software contamination, and diffusion of software contamination, including computer viruses, worms and trojans ("Virus Events").

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- (b) Where the Client has complied with the Crofti Policies and clause 5, but such Virus Events have incurred nonetheless, Crofti will work closely with the Client at no extra cost (including out-of-hours where critically necessary) to assist the client to recommence operation.
- (c) Crofti will at no time pay on behalf of a client any extortion fees, ransom demands or fines to any third party, nor is Crofti liable to claim under their own insurance policy for issues not caused by Crofti's direct negligence, where the Client's insurance policy has failed to pay out or where the Client has failed to maintain the relevant insurance.

11. Indemnity

11.1 Indemnity

- (a) The Client indemnifies, and will keep indemnified, Crofti against any claims, loss (other than consequential loss), damages, fines, and damage to reputation instigated by a third party directly or indirectly as a result of negligent acts or omissions of the first party or its User(s), staff, agents and contractors.
- (b) The parties indemnify, and will keep indemnified, one another against any Loss arising from:
 - (1) breach of these Standard Terms (including where caused or contributed to by that party's staff, agents, and/or contractors;
 - (2) property damage (other than data loss); or
 - (3) personal injury or death of any person.
- (c) The liability of one party to indemnify the other party shall be reduced proportionally to the extent that any act, omission or negligence of a party, its employees, contractors or agents (as the case may be) has contributed to the loss or damage.

11.2 Insurance

Crofti will maintain:

- (a) all insurances required by law, including workers compensation insurance;
- (b) public liability insurance for an amount of not less than \$5 million per claim;
- (c) product liability insurance for an amount of not less than \$5 million per claim and in the aggregate; and
- (d) professional indemnity insurance for an amount of not less than \$5 million per claim and in the aggregate.

12. Termination

- (a) Either Party may terminate the Client Services Agreement immediately by written notice upon the occurrence of one of the following events:
 - (1) if the other Party is in breach of this Client Services Agreement and that other Party has failed to remedy that breach within sixty (60) days of a written notice to it from the first-mentioned Party, specifying the breach and requiring it to be remedied;
 - (2) if the other Party is in breach of this Client Services Agreement and that breach is not capable of remedy; or
 - (3) an Insolvency Event occurs in respect of the other Party.

- (b) The Client Services Agreement may be terminated by the mutual written agreement of the Parties.
- (c) Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either Party.
- (d) The following clauses survive termination of the Agreement: Clause 8 (Intellectual Property Rights), Clause 9 (Confidentiality), Clause 19.4 (Liability), Clause 11 (Indemnity), Clause 18 (Poaching), Clause 13 (Consequences of Termination), and this clause 12(d).

13. Consequences of Termination

Upon termination or expiration of this Client Services Agreement:

- (a) Crofti will discontinue providing the Services and any Additional Services;
- (b) all money due by the Client to Crofti under any Proposal or invoice, or otherwise, must be paid in full along with any interest owing and cost incurred under an indemnity or warranty breach within this Agreement;
- (c) each Party must return to the other Party or (if requested by the other Party) destroy, all Confidential Information belonging to the other Party;
- (d) Crofti must provide the Client with all of the Client's data and software in a useable form, to be determined by Crofti acting reasonably, within a reasonable period of time, not exceeding 10 business days.
- (e) the Client acknowledges and agrees that where this Agreement is terminated because the Client is or has been subject to any Insolvency Event, Crofti will not be required to provide to the Client any further services under this Agreement (including services such as data extraction), unless:
 - (1) Crofti has otherwise agreed to provide such services; and
 - (2) such services are provided at Crofti's then current standard time and materials rates.

14. Notices

14.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in the Reference Schedule or in the Proposal or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an authorised officer of the sender.

15. Miscellaneous

15.1 No assignment

A Client must not assign, transfer or novate all or any part of its rights or obligations under or relating to the Agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of Crofti.

15.2 Poaching

The Client must not during any of the Restraint Periods:

- (a) canvass, solicit or entice away;
- (b) or attempt to canvass, solicitor or entice away,

any employee or contractor of Crofti or its associates, without the prior written consent of Crofti, such consent may be conditional upon the payment of compensation.

15.3 Severability

If a provision of the Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of the Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

15.4 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to the Agreement and the transactions contemplated by it.

15.5 Force Majeure

(a) If a Party (**Affected Party**):

- (1) is prevented from, or delayed in, performance an obligation (other than an obligation of the Client to pay money) by an event of Exceptional Circumstance; and
- (2) the Affected Party as soon as possible after the event of Exceptional Circumstance notifies the other Party providing particulars of:
 - (A) the event of Exception Circumstance;
 - (B) the anticipated period of delay; and
 - (C) the action (if any action is reasonably possible) the Affected Party intends to take to mitigate the effect of the delay,

then those obligations of the Affected Party are suspended for the duration of the event of Exceptional Circumstance.

15.6 Jurisdiction

The Agreement is governed by and construed in accordance with the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

15.7 Obligation on other Party

The Party which is not the Affected Party must use all reasonable endeavours to remove or mitigate its Loss arising from, and the effects of, the event of Exceptional Circumstance.

15.8 Termination

If Exceptional Circumstances prevent an Affected Party from performing an obligation for a period of 30 days or more, then the other Party may terminate this Agreement.

15.9 Waiver

A party's waiver of a right under or relating to the Agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party. No other act, omission or delay by a party will constitute a waiver of a right.

15.10 Counterparts

The Agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument.