

Terms and Conditions

1 Preamble

- 1.1 GolfInsight is a provider of Information Technology Products, Services and Support to the golf industry.
- 1.2 Client wishes to engage with GolfInsight to procure one or more Products, Services or Support from GolfInsight.

2 Definitions

- 2.1 "Agreement" means this document, these terms and conditions along with Appendix.
- 2.2 "Customisations" means changes, modifications, amendments to software applications.
- 2.3 "Help Desk" means the provision of telephone, internet or email assistance.
- 2.4 "Products" means third party vendor software applications, GolfInsight developed software applications ("GolfInsight Products") and hardware.
- 2.5 "Services" means the provision of consulting and development activities, including Customisations. This may include but not limited to: project management, business analysis, training, technical configuration, IT Infrastructure engineering.
- 2.6 "Subscription License" means access to Products by Licensee that are made available, displayed, run, accessed, or otherwise interacted with, directly or indirectly, where the Licensee uses the Products from data centre(s) through the Internet, a telephony network or a private network, on a rental, subscription or services basis. Subscription License excludes any services involving installation of Products directly on any end user device to permit an end user to interact with the Products
- 2.7 "Support" means assistance rendered to the Client from Help Desk.

3 Engagement

- 3.1 The provision of Products, Services, Subscription License and Support from GolfInsight are governed by this Agreement.
- 3.2 Where certain Products are governed by product-specific licence agreements, such agreements are independent of this Agreement.
- 3.3 GolfInsight will provide Services to Client from time-to-time as requested verbally by Client or as described in written form such as an engagement letter, project scope agreement, solution design document, development order, change requests or statements of work which will form exhibits to these terms and conditions (collectively, the "Agreement") and unless stated to be fixed, these are provided on a time and materials basis.
- 3.4 Services may be provided either at a Client site or off-site.

- 3.5 Retention of Title: Risk of Products sold to the Client (excluding Subscription Licenses) transfers to the client at time of delivery, but GolfInsight retains title of ownership until all amounts due have been paid and reserves the right to enter client premises to remove unpaid goods.

4 Fees, Payment

- 4.1 All amounts in this Agreement are specified and payable in Australian Dollars.
- 4.2 All charges are exclusive of GST and any other governmental duty or tax which is applicable in any jurisdiction. Any such tax shall be additionally charged to the Client at the appropriate rate in force from time to time. GST has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999.
- 4.3 All Services are provided on a fee for service basis at prevailing rates.
- 4.4 Time and Materials Services are invoiced weekly in arrears based on work performed.
- 4.5 All software and hardware will be invoiced and must be paid in full prior to delivery.
- 4.6 The Client agrees to pay for all invoices within 14 days following date of the invoice unless stated otherwise on the invoice or in Client's proposal.
- 4.7 A travel fee may be applicable for on-site visits to Client premises.
- 4.8 GolfInsight may refuse provision of Support and Services, and suspend the Subscription Licence, where Client account is not maintained within payment terms.
- 4.9 Any overdue amounts may be charged interest at the prevailing ANZ Reference Rate. The client will be liable for all collection and legal costs. Any amounts due in respect of this agreement may not be offset against any other claims the client may have against GolfInsight.

5 Term and Termination

- 5.1 In the event of any breach of any term or provision of the Agreement by either party, which is incapable of being rectified, the other party may terminate the Agreement by giving 30 days prior written notice thereof.
- 5.2 The parties may terminate this Agreement by mutual agreement which will not be unreasonably withheld, by providing 90 days written notice.
- 5.3 Either party may terminate this Agreement immediately upon written notice to the other party if the other party becomes or threatens to become or is in jeopardy of becoming subject to any form of insolvency administration.
- 5.4 No refunds for payments made in respect of Support, Subscriptions or Products will be issued.
- 5.5 Client shall be responsible for payment of all Services rendered prior to the date of termination. GolfInsight may terminate the Agreement immediately with written notice if any invoice is unpaid for a period greater than 30 days following its due date.

6 Limited Warranty

- 6.1 GolfInsight represents and warrants that: (i) it has the authority to enter into this Agreement; (ii) it will comply with all applicable law; (iii) Services will be provided in a professional and workmanlike manner; and (iv) to the best of its knowledge, Products, Services and Support will not violate the copyright or proprietary rights of any third party, provided, however, that GolfInsight expressly disclaims any warranty relating to infringement resulting from GolfInsight's use of tools, instructions, specifications, or other materials provided by Client to GolfInsight ("client materials") and provided, further, that the foregoing warranty shall not apply where Client or its Agents make modifications to any aspect of the results of the services.
- 6.2 Customisations that are provided on a fixed price basis are subject to a 30 day warranty from the date of delivery. During this warranty period GolfInsight will resolve all programming errors specific to the Customisation specification. Errors or issues arising after this period will be resolved using chargeable Services.
- 6.3 Client represents and warrants that: (i) it has the authority to enter into this Agreement; (ii) it will comply with all applicable law; (iii) it has or has obtained the right to permit GolfInsight to supply any of the Products, Services or Support contemplated by this Agreement; and (iv) in entering into this Agreement it has relied upon its own experience, skill and judgement to evaluate the Products, Services and Support and that it has satisfied itself as to the suitability of the Products, Services and Support to meet its requirements.

7 Software Updates

- 7.1 For Products which the Client has licensed and has paid the relevant Subscription License fees, GolfInsight will from time to time, provide at no additional charge, access to new software versions and upgrades as they are made available.
- 7.2 Any Services associated with installation and/or upgrading of software, including the re-application or modification of Customisations are provided on a standard chargeable basis.
- 7.3 GolfInsight may, from time to time, introduce new modules and/or functionality to existing Products which can only be accessed by Client where Client has agreed to any associated increase in Subscription Licence Fees.

8 Independent Contractor Status

- 8.1 The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties hereto.

9 Indemnification

- 9.1 GolfInsight agrees to indemnify, hold harmless and defend Client from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and legal fees) incurred by Client and for which Client provides notice to GolfInsight within thirty (30) days of such claim which relate to the violation of any third party's copyright or

proprietary rights arising in the provision of Services or GolfInsight Products, except where such violation arises from GolfInsight's reliance on Client's instructions or specifications or where Client or its agents modify any aspect of the results of the Services, in which case Client shall indemnify GolfInsight.

- 9.2 In the event of any infringement or claimed infringement, Client's sole remedy shall be that GolfInsight shall, in its sole discretion: (i) modify infringing materials to be non-infringing; (ii) obtain a license for Client to use the infringing materials; or (iii) subject to the limitation of liability provisions of this Agreement, provide monetary compensation to Client under this indemnity.
- 9.3 Client agrees to indemnify, hold harmless and defend GolfInsight from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and legal fees) incurred by GolfInsight and for which GolfInsight provides notice to Client within thirty (30) days of such claim which relate to the violation of any third party's copyright or proprietary rights arising in connection with the provision of Services where such violation arises from GolfInsight's reliance on Client's instructions or specifications or where Client or its agents modify any aspect of the results of the Services.

10 Limited Liability

- 10.1 To the full extent permitted by law, and subject to the remainder of this clause, the parties agree that neither party to this Agreement shall have any liability, obligation or responsibility, whether in contract, tort (including but not limited to negligence), under statute or on any other basis, for any indirect, incidental, consequential, special or exemplary damages, or damages for loss of profits, revenue, data or use, arising in any way in connection with this Agreement, including, but not limited to, damage to property, injury to persons, lost profits, or delays or inconvenience, even if such party has been advised of the possibility of such damages.
- 10.2 Under the Competition and Consumer Act 2010 Act No. 51 of 1974 as amended (Cth) when implied conditions and warranties cannot be expressly excluded, GolfInsight limits its liabilities in the case of Services, to the supplying of the Services again, or the payment of the cost of having the Services supplied again at the discretion of GolfInsight.
- 10.3 To the full extent permitted by applicable law, GolfInsight's maximum aggregate liability for damages under or in relation to this Agreement or in tort (including negligence), under statute or otherwise shall not exceed the amount of the fees paid by Client to GolfInsight under this Agreement during the previous 12 month period in which such claim arises.

11 Intellectual Property and Privacy

- 11.1 All rights in any intellectual property relating to the GolfInsight Products, Services, Support, Customisations, related documentation, or background material remain the property of GolfInsight.
- 11.2 GolfInsight retains all rights to intellectual property created in connection with its performance of Services, Support and Customisations hereunder or elsewhere.

- 11.3 GolfInsight grants, subject to this clause, to the Client a non-exclusive licence to access the Intellectual Property Rights in any Customisations and result of Services provided to the Client for its own internal purposes. For the avoidance of doubt, the Client is not entitled to exploit the Intellectual Property referred to in this clause.
- 11.4 All Client data stored within the Software or its related components remains the property of the Client. The Client warrants that any logo or copyright material supplied by it to GolfInsight are its own and may be used with its authorisation. GolfInsight accepts no responsibility for the accuracy or protection of the Client's data except to the extent imposed by privacy legislation. The Client warrants that it has complied with all such legislation and will continue to ensure it does so.
- 11.5 The Client agrees that GolfInsight may include Client data in aggregation in order to provide information which compares Client data to the aggregated data. Unless otherwise agreed in writing, GolfInsight will only disclose Client data to the Client and shall include Client data in any aggregates without identification.

12 Privacy Notice

- 12.1 GolfInsight will comply, and will ensure that all of its representatives comply with the Privacy Act 1988 in respect of all personal information collected, used, disclosed and otherwise handled by them under or in connection with this Agreement,
- 12.2 Subject to the Privacy Act 1988, GolfInsight uses Client information to provide Client with information relating to GolfInsight or promotional details about products and services that may be of interest to Client, unless Client has previously advised GolfInsight not to be contacted for those purposes. Should Client no longer wish to receive information such as this, please notify GolfInsight using the contact details in section 12.3.
- 12.3 If Client has any questions or feedback about privacy, or wish to make a complaint about the way in which GolfInsight has handled Client personal information, contact GolfInsight as follows: (i) privacy@GolfInsight.com.au; (ii) 0411 833 396; (iii) The Privacy Officer, GolfInsight Pty Ltd, PO Box 45, Lower Plenty, Victoria 3093, Australia.

13 Confidentiality

- 13.1 Each party to this Agreement (each, a "Recipient") shall protect and keep confidential all non-public information disclosed by the other party (each a "Discloser") and identified as confidential by the Discloser ("Confidential Information"), and shall not, except as may be authorised by Discloser in writing, use or disclose any such Confidential Information for a period of three (3) years from the Termination Date. Upon termination or expiration of this Agreement, Recipient shall return to Discloser all written materials which contain any Confidential Information. The obligations of confidentiality shall not apply to any information which: (i) was previously known to Recipient; (ii) is or becomes publicly available, through no fault of Recipient; (iii) is disclosed to Recipient by a third party having no obligation of confidentiality to Discloser; (iv) is independently developed by Recipient; or (v) is required to be disclosed as a matter of law.

13.2 Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.

14 Solicitation

14.1 Both parties agree not to hire or attempt to hire employees or subcontractors of the other party without prior written consent, during the term of this Agreement and during the one (1) year period commencing upon termination of this Agreement. If consent is provided, then the 'hiring' party agrees to pay the other party a recruitment fee equivalent to four months of the salary package as compensation. This restriction also applies for a period of 12 months from the date of resignation/termination of any employee or subcontractor.

15 Delays

15.1 Neither party shall be liable for delays caused by fire, accident, labour dispute, war, insurrection, riot, act of government, act of God, or any other cause reasonably beyond its control; but each party shall use all reasonable efforts to minimise the extent of any such delay. GolfInsight shall not be liable to Client (or Client's customers) for any delay in performance or any failure in performance hereunder caused in whole or in part by reasons beyond the control of GolfInsight and resulting from Client's failure to furnish in a timely manner information, equipment, or materials necessary to perform the Services.

16 Amendments

16.1 Changes to this Agreement need to be agreed in writing by both parties.

17 Assignment

17.1 Neither party may assign its rights or obligations hereunder (except to subsidiaries or affiliates) without prior written consent of the other party, which consent will not be unreasonably withheld.

18 Governing Law

18.1 This Agreement will be governed by and is construed in accordance with the laws of New South Wales, Australia without regard to its rules concerning conflicts of laws. The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

Appendix A

Standard Service fees

A1. Fees

GolfInsight reserves the right to amend rates from time-to-time.

Minimum Charges

Minimum charge of 3 hours for on-site work

Minimum of 1 hour for remote services work

A2. Weekend, Public Holiday or out of hours

Services performed on a weekend, public holiday or out of hours will be charged at double rates.

Out of hours is deemed to be between the hours of 6pm to 8am.

A3. Training fees

Training room charge will be charged at current rates per day

Training manuals are will be charged at current rates per copy

A4. Cancellation

If Client cancels booked Services with less than 3 business days' notice, GolfInsight will levy a 100% cancellation charge equivalent to the Services that have been cancelled.

A5. Travel charges

For metropolitan clients, (i.e. clients within 50kms of a GolfInsight office) a travel zone fee is applicable for any on-site visit by GolfInsight resources to a Client premise. The fee is in lieu of charging any expenses. The fee is calculated on the basis of the approximate cost of a return taxi fare.

For non-metropolitan clients, (i.e. clients located beyond 50kms of a GolfInsight office) GolfInsight will pass on expenses at cost plus charge the time taken to travel to and from the Client's premises. Travelling time will be charged at 50% of the standard rate.

Note: Where a client specifically requests the services of a named or specialist consultant whose base location is in a different city from the client the non-metropolitan rule will apply, even if the client's premises are located within 50kms of a local GolfInsight office.