

**MICROCAT LIVE  
TERMS & CONDITIONS (AP/EU)**

**These terms and conditions form part of the Microcat LIVE ORDER FORM. When the ORDER FORM is accepted by you, these TERMS AND CONDITIONS are accepted and apply to the supply of products and services by Infomedia.**

**1. DEFINED TERMS**

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The following capitalized terms are defined terms for the purposes of this agreement:

**Committed Term:** means the number of months set out in the Order Form. The Committed Term commences on the Software Activation Date.

**Commencement Date:** The date from which this agreement commences between the parties and is deemed to be the earlier of (i) the date on which the Dealer accepts the Order Form by signature or (ii) the date on which Infomedia start to provide any products or services to the Dealer.

**Dealer or 'you':** Refers to the party specified as the Dealer in the Order Form and extends to include the employees and agents of the Dealer, as context requires.

**Infomedia:** Infomedia Ltd of 3 Minna Close, Belrose, NSW, Australia or its authorized nominee.

**Order Form:** The order form signed by the Dealer and which sets out the Software and Services.

**Software:** Infomedia's proprietary Microcat Live software.

**Software Activation Date:** The date on which the Software is made available to the Subscribers.

**Subscriber:** The individual user(s) of the Software.

**2. SUBSCRIPTION**

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Upon receipt of a signed Order Form, Infomedia will enable access to nominated Subscribers, being the Software Activation Date.

**3. SOFTWARE: TERMS OF USE**

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- (i) The terms of use and licensing of the Software are set out in Infomedia's standard form, End User License Agreement(s) ("**EULA**") (and which can be found at <http://www.infomedia.com.au/legal/> ) and forms a binding agreement between Infomedia and each Subscriber.
- (ii) Dealer and each Subscriber must comply with these Terms and Conditions together with the terms of the EULA at all times.
- (iii) Without in any way limiting the terms of the EULA, the Dealer hereby warrants that they will (i) comply with all laws, including without limitation, all export control, privacy and disclosure laws when transmitting data to Infomedia or its affiliates (ii) not alter, circumvent, reverse engineer, recompile, decompile, disassemble, resell, pass-through, sub- license, rent, lease, timeshare or re-brand any part of the Software, nor shall it facilitate, induce or permit any other party to do the same.
- (iv) Nothing in this agreement shall be construed as conferring any right, interest or title in the other party's intellectual property.
- (v) To the extent of any inconsistency between the EULA and the terms of this agreement, the terms of the EULA will prevail.

**4. PRICING AND PAYMENT TERMS**

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- 4.1 Infomedia will issue invoices in advance once per calendar month for all Software, including pro rata for any part periods.

- 4.2 Any ad hoc or additional services or programs not a part of the Software shall be directly invoiced by Infomedica and must be paid by Dealer directly to Infomedica upon invoice.
- 4.3 All Fees exclude any applicable taxes or levies which will be added to each Invoice.
- 4.4 All invoices are due with 14 days of issue.

## **5. TERM & TERMINATION**

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### **5.1 Term & Renewal**

This agreement is will commence with effect from the Commencement Date and remains in force until the end date of the Committed Term unless validly terminated earlier. Subscribing Dealer agrees to maintain their monthly subscription to the Software as set out in the Order Form for the Committed Term. Upon expiration of the Committed Term, this agreement will automatically renew under the same terms and conditions for periods equal to the previous Committed Term, save that fees may be adjusted by Infomedica at time of renewal to reflect the annual change in the Consumer Price Index (CPI) as published by the United States Bureau of Labor Statistics under the "all items index".

### **5.2 Termination**

This agreement may only be terminated in the following circumstances:

- (a) By the Dealer but only at the expiration of the Committed Term by giving at least thirty (30) days' prior written notice to Infomedica prior to the expiration of the current Committed Term;
- (b) By Infomedica with immediate effect if the Dealer is in breach of this agreement or if any Subscriber is found to be in breach of the terms of any End User License Agreement;
- (c) By Infomedica in the event that the supply of the Software infringes, or becomes likely to infringe third party intellectual property; or
- (d) By Infomedica in the circumstances described in the clause 6 below.

All rights and liabilities accrued pre-termination shall remain enforceable between the parties. The necessary components of this Agreement shall be construed to survive termination to give effect to this provision.

## **6. THIRD PARTY AGREEMENTS**

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- 6.1 Dealer acknowledges and agrees that certain Infomedica products and/or certain functionalities within the Infomedica products may be reliant on (i) the availability of data from Original Equipment Manufacturers (the OE Data) and/or (ii) single or bi-directional integration with third party dealer management systems (DMS Integration). Infomedica obtains the right to use the OE Data and/or the DMS Integration pursuant to separate agreements with OE's and DMS providers from time to time (Third Party Agreements).
  - 6.3 If any Third Party Agreement terminates for any reason during the Term of this Agreement then Infomedica may unilaterally elect to take one or more of the following steps to prevent infringement of any legal right of any third party: (i) limit the functionality of the Infomedica Products (ii) cease supplying some or all of the Infomedica Products or (iii) terminate this Agreement. Infomedica will use reasonable endeavors to give advanced notice regarding any action taken under this clause and the reasons for the same.

## **7. WARRANTY**

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- 7.1 Infomedica warrants that it will use suitably qualified personnel to provide Services including Support. Infomedica does not warrant that the Software or services will be uninterrupted. Dealer shall ensure that all users of the Software are suitable trained and competent and are made aware of the limitations of any recommendations made by the Software (which are based on user input

and use manufacturer recommendations) and that they apply their technical skills and knowledge in reviewing and implementing any recommendations.

- 7.2 Infomedia represents and warrants to Dealer that it has all necessary ownership, rights and licenses to grant Dealer the license herein free and clear of any and all agreements, liens, adverse claims, encumbrances and interests of any person. Infomedia represents and warrants to Dealer that in all cases where the trademark, copyright or other intellectual property of a third party is used in connection with the Software, Infomedia has the written consent of said third party (through ownership rights or a valid, enforceable license) to use said intellectual property in the manner and to the extent so used and in the jurisdiction used. Infomedia further represents and warrants to Dealer that the use of the Software as contemplated by this Agreement will not infringe the intellectual property rights of any third party when used in accordance with this Agreement, including the EULA.

## **8. LIABILITY**

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- 8.1 EXCEPT FOR INDEMNIFICATION OBLIGATIONS, BREACHES OF CONFIDENTIALITY, INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, TO THE EXTENT PERMITTED BY LAW, INFOMEDIA'S LIABILITY HEREUNDER SHALL NOT EXCEED IN AGGREGATE AN AMOUNT EQUAL TO THE MONTHLY SOFTWARE AND/OR SERVICE FEES PAID BY THE DEALER FOR THE MONTH IN WHICH THE DEFECT OR BREACH OCCURRED.
- 8.2 IN NO EVENT SHALL INFOMEDIA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, SUPPLIERS OR PARTNERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE OR DATA) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE ARISING OUT OF THE PERFORMANCE OF THE SERVICES, EVEN IF INFOMEDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. PRIVACY**

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In order to provide services to Dealer and Subscribers under this Agreement and in using the Software, Infomedia may collect and use person identifiable information (PII) in accordance with the Infomedia Privacy Policy, which can be found at [www.infomedia.com.au/privacy](http://www.infomedia.com.au/privacy). Dealer and each Subscriber warrants to Infomedia that if they enter or provide any PII of a third party when using the Software, that they have obtained the consent of that third party to do so.

## **10. GENERAL**

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This Agreement, together with the EULA, form the entire agreement between the parties and is governed by the laws of the State of NSW Australia. Dealer may not assign, novate or transfer this Agreement without the prior written consent of Infomedia and then only if it ensured that the incoming party agrees in writing to the terms and conditions of this Agreement in a manner acceptable to Infomedia. Each party warrants that they enter into this contract freely and without relying on any verbal or documentary representations other than as recorded in the agreements between the parties. This agreement may only be varied in writing between the parties and subject to the signature of an authorized representative of each. Each party bears its own costs in entering into this agreement.