

# TERMS OF SERVICE

These Terms and Conditions were last revised 11 October 2012 and are subject to periodic revisions and updates.

**IMPORTANT- READ CAREFULLY: CUSTOMER'S USE OF SERVICES IS CONDITIONED UPON CUSTOMER'S COMPLIANCE WITH, AND CONFIRMS CUSTOMER AGREEMENT TO BE BOUND BY AND ACCEPTANCE OF THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION ALL SCHEDULES (THIS "AGREEMENT"). IF CUSTOMER DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT USE THE SERVICES.**

**THE CUSTOMER IS ENCOURAGED TO PRINT OR DOWNLOAD THESE TERMS AND CONDITIONS AND TO REGULARLY CHECK THIS WEBSITE TO OBTAIN TIMELY NOTICE OF ANY CHANGES TO TERMS, WHICH MAY OCCUR FROM TIME TO TIME AND AT ANY TIME WITHOUT NOTICE.**

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Meanings shall apply to capitalised terms used in these terms and conditions as specified in this provision, unless the context otherwise requires:

**"Authority"** means any governmental, statutory or judicial body, instrumentality, department, commission, authority, tribunal, agency or other similar entity; **"Authorities"** has a corresponding meaning.

**"Agreement"** comprises an agreement signed by the Customer and ECT for the supply of the Services and these terms and conditions.

**"Charges"** means all charges payable by the Customer in accordance with the Agreement.

**"Claim"** means any claim or cause of action in contract, tort or under statute or otherwise.

**"Confidential Information"** means all information, whether or not in material form, all oral communications, documents and other information disclosed by a Party to the other Party which: (i) is by its nature confidential; (ii) is marked confidential or proprietary; or (iii) a Party informs the other Party at the time of disclosure is confidential or proprietary; and includes but is not limited to:

- (a) Personal Information;
- (b) information contained in the Agreement;
- (c) trade secrets, know-how, techniques, business and marketing plans, projections, surveys, financial records, arrangements and agreements with third parties;
- (d) customer information, information proprietary to customers, formulae, customer lists;
- (e) designs, plans, models, and concepts not reduced to material form;
- (f) all notes and other records (whether or not in material form) relating to the Confidential Information; and
- (g) the fact that the parties have entered and/or will enter into any contemplated business transactions between them.

**"Customer"** means the customer detailed in first page of the Agreement.

**"Default Event"** means any of the following events:

- (a) a failure by the Customer to pay or perform an obligation or covenant under the Agreement;
- (b) non-compliance by the Customer with, or the fact of inaccuracy of, any representation made or deemed to be made or repeated by the Customer in the Agreement, or in any document delivered to ECT under, or in connection with, the Agreement;
- (c) an Insolvency Event occurs in relation to the Customer; or
- (d) the initiation of any investigation by an Authority into the business activity or business records of the Customer.

**"ECT"** means Enterprise Care Teleconferencing (Asia) Pty Ltd (ABN 42 122 047 492).

**"End Date"** means the date on which the Agreement ends.

**"Force Majeure Event"** means an event which is beyond the control, and without the fault or negligence, of the Party affected, and which could not have been prevented by the Party affected exercising reasonable diligence and includes: an act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought, war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection, explosion, government intervention, act of public enemy, sabotage, malicious damage, terrorism, civil unrest; contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel, confiscation, requisition, expropriation, prohibition, embargo, damage to property by or under the order of any Authority, strikes at a national level or industrial disputes at a national level, or any failure of the internet or telecommunications services.

**“GST”** includes any value added tax, consumption tax, gross receipts tax or any other tax or charge or impost of a similar nature payable in respect of goods and/or services supplied, consumed or otherwise in connection with the Agreement including any such tax levied charged or assessed under GST Law.

**“GST Law”** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“Insolvency Event”** means with respect to a Party, the occurrence of any of the following events:

- (a) an application is made to a court for an order, or an order is made, that the Party be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Party, or one of them is appointed, whether or not under an order;
- (c) except to reconstruct or amalgamate while solvent, with the prior written consent of the other Party, the Party enters into, or resolves to enter into a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) an order is made, or the Party passes a resolution, for the winding up of the Party, or the Party otherwise dissolves itself, or gives a notice of intention to do so, except to reconstruct or amalgamate while solvent, and with the prior written consent of the other Party or is otherwise wound up or dissolved;
- (e) the Party is or states that it is unable to pay its debts as and when they fall due or suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (f) a receiver or receiver and manager, or administrator or controller is appointed to the Party or any part of the property of the Party or steps are taken with respect to the making of such appointment;
- (g) the Party takes steps or threatens to cease to carry on its business as a going concern; or
- (h) any occurrence, similar to any of the above occurrences, happening to or in respect of the Party under the law of the relevant jurisdiction.

**“Intellectual Property Rights”** means any intellectual, industrial or commercial property, or right of a proprietary nature, including:

- (a) any patent, trade mark, service mark or design;
- (b) any copyright or work of authorship;
- (c) any business, trade or commercial name or designation, brand name, internet website or domain name;
- (d) any other industrial or commercial right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural service or otherwise;
- (e) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any previous item, whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description.

**“Interest Rate”** means the interest rate of 1.5% per month.

**“Law”** means the common law and requirements of all statutes, rules, ordinances, codes, industry and professional standards, regulations, proclamations and by-laws or consents issued by an Authority, present and future.

**“Liability”** means charges, claims, payments, actions, judgments, damages, losses (including any special, indirect or consequential loss or damage), costs, fees, expenses, liabilities and obligations.

**“Minimum Charge”** means the minimum monthly amount payable by the Customer.

**“Minimum Charge Period”** means the period specified in the Agreement.

**“Monthly Subscription Charges”** means the minimum monthly amount payable by the Customer.

**“Parties”** means Customer and ECT, and **“Party”** means one of them.

**“Personal Information”** has the same meaning given to it by the Privacy Act.

**“Privacy Act”** means the *Privacy Act 1988* (Cth).

**“Services”** means those services to be provided by ECT as specified in the Agreement.

**“Start Date”** means the later of the date specified and the date upon which ECT commences the provision of the Services to the Customer in accordance with the Agreement. If the Agreement specifies the provision of two or more Services which start at different dates, and one of them is a Microsoft Services, Cisco Webex Services, Webcasting Services or Adobe Acrobat Service, the Agreement in regard to the latter Services shall commence on the date on which the provision of that Service commences.

**“Subscription Plan”** means a fixed term plan which relates to the Services as specified in the Agreement.

**“Subscription Period”** means period during which the Subscription Plan shall be applicable as specified in the Agreement.

**“Usage Charge”** means those charges payable by the Customer on account of use / consumption of the Services determined on a usage basis in accordance with the Agreement.

## 1.2 Interpretation

In the Agreement, headings and terms appearing in bold typeface are for convenience only and do not affect the interpretation of the Agreement and, unless the context otherwise requires

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority;

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- (e) a reference to "dollars" or "\$" is to an amount in Australian currency except where otherwise stated in the Agreement;
- (f) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) the terms "including", "for example", "such as" and similar terms do not imply any limitations;
- (i) no provision of the Agreement shall be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of that provision;
- (j) where the day on or by which any thing is to be done is not a business day, that thing must be done on or by the next business day.

## **2. TERM**

Where the Agreement specifies:

- (a) that the term of the Agreement is fixed, the Agreement shall commence on the Start Date and shall run for the term. Thereafter, the Agreement shall automatically continue for a further 12 months' period on the same terms and conditions unless a Party notifies the other Party in writing at least 30 days prior to the expiry of the Agreement that it does not wish to renew it.
- (b) no fixed term then the Agreement shall commence on the Start Date and shall continue until terminated in accordance with **clause 20**.
- (c) that it is a Subscription Plan, the Agreement shall commence on the Start Date and shall continue for 12 or 24 months, as specified in the Agreement plus any bonus months as specified in **clause 8.6**.

## **3. PROVISION OF SERVICES**

In consideration for entry into the Agreement and payment of the Charges, ECT shall:

- (a) provide the Services to the Customer; and
- (b) grant the Customer a non-exclusive non-transferable right to use the Services on the terms and conditions of the Agreement.

## **4. USE OF SERVICES**

### **4.1 Responsibility for Use**

The Customer shall be solely responsible for the use, supervision, management and control of the Services. The Customer shall:

- (a) ensure that the Services are at all times:
  - (i) protected from misuse, interference, damage, destruction or any form of unauthorised use; and
  - (ii) used in compliance with the Agreement; and
- (b) immediately notify ECT in the event of unauthorised use, or suspected unauthorised use or any access numbers, keys and passcodes or any other breach of security and the Customer shall be liable for fraudulent charges until such time as the Customer has notified ECT to suspend any compromised access numbers, keys and/or passcodes.

### **4.2 Restrictions on Use**

Without limitation to any other provision, the Customer must not (nor cause or permit a third party to):

- (a) use the Services or related documentation in combination by any means and in any form with other goods and services not contemplated by the Agreement or approved by ECT;
- (b) use the Services or related documentation in a manner or for a purpose which:
  - (i) is not reasonably contemplated or not authorised by ECT; or
  - (ii) is improper, immoral or fraudulent;
  - (iii) infringes any person's Intellectual Property Rights; or
  - (iv) restricts or interferes with the provision of services by ECT to any other customers or users.
- (c) modify or alter the Services or related documentation without the prior written consent of ECT;
- (d) reverse assemble or reverse compile the whole or any part of the Services; or
- (e) enter into any transaction, including but not limited to resale, relating to the Services or related documentation with a party other than ECT, without ECT's prior written consent.

### **4.3 Obligations as to Content**

- (a) The Customer must not, and shall ensure that its employees, contractors and agents do not, use the Services to send or make available information or data which is:
  - (i) indecent, obscene, pornographic, offensive, racist, menacing, illegal or confidential;
  - (ii) defamatory or abusive; or
  - (iii) misleading and/or deceptive.
- (b) The Customer warrants and covenants to ensure that any information and data provided, including but not limited to Personal Information, owned or used by the Customer in association with the Services is:
  - (i) accurate and has been collected and used in compliance with all relevant Laws including without limitation the Privacy Act; and
  - (ii) used with the consent, and in compliance with, the directions of any third party that holds copyright or any other Intellectual Property Rights in any of that information and data, as may be applicable.

- (c) ECT may at any time refuse to forward any information or data that it reasonably believes does not comply with this clause, and shall not be liable for so doing.

## **5. CHARGES**

### **5.1 Invoice**

ECT shall provide the Customer with an electronic invoice each month on account of the Charges payable by the Customer.

### **5.2 Payment**

- (a) The Customer shall pay the Charges to ECT within thirty (30) days of the date of the invoice.
- (b) Where the Customer requires a paper invoice, a surcharge will apply.
- (c) Where a Customer's monthly invoice charge is less than \$25, a minimum invoice charge of this amount will apply. Should there be no activity on the Customer's account in that month, then no invoice or charge will apply.
- (d) Where a Customer pays their account by credit card a 1.5% credit card processing fee will be levied on the total invoice.

### **5.3 Late Payment**

- (a) Without prejudice to any other remedies ECT may have under the Agreement or otherwise, if the Customer fails to pay any Charges by the due date ECT may, without notice to the Customer, charge interest at the Interest Rate on the outstanding Charges or any other monies due and unpaid by the Customer, until such time as the Customer has paid, in full, the outstanding amount and any interest accrued on the outstanding amount, and the Customer shall pay to ECT on demand any reasonable costs incurred by ECT in relation to collection of any amounts owing, including any legal costs incurred by ECT, on a full indemnity basis.
- (b) Where the Customer exceeds the contractual payment terms, a late payment fee may apply.
- (c) Where the Customer unduly exceeds the contractual payment terms, the Services may be suspended. Should this occur, and the Customer wishes to continue to use the Service, then a reconnection fee will be charged to the next monthly invoice.

### **5.4 Disputes**

- (a) The Customer must make full payment of all Charges in accordance with **clause 5.2** notwithstanding any dispute as to the amount stated on any invoice.
- (b) The Customer shall notify ECT in writing of any dispute with respect to the whole or any portion of the amount claimed in an invoice submitted by ECT. Such notice must be given within 7 days of receipt of the relevant invoice.
- (c) If it is determined by ECT, acting reasonably, that some or all of the amount in dispute ought not to have been paid by the Customer, ECT shall credit that amount towards the payment of the next invoice issued by ECT in accordance with **clause 5.1** or where there is to be no further invoice issued by ECT, ECT shall reimburse to the Customer the relevant amount.
- (d) The Customer must notify ECT of any charge disputed in good faith, with supporting documentation, in accordance with **clause 5.4(b)**, or the Customer shall be deemed to agree to such charges and no adjustments to charges or invoices will be made.

### **5.5 Rate Changes**

- (a) Customer acknowledges and agrees that rates are subject to change at any time, and without prior written notice to Customer. Where ECT increases such rates, ECT may, in its sole discretion, notify Customer by including a statement to that effect on the Customer's invoice.
- (b) Rates which are specified in the Agreement are subject to change at any time upon ECT giving no less than thirty (30) days' prior written notice to Customer. Customer agrees that such notice may be included in a ECT invoice.
- (c) Notwithstanding the preceding clauses, Customer acknowledges and agrees that each year ECT may increase the rates by the greater of the CPI rate, or 5.9% without prior notice to Customer.

## **6. STANDARD BASIS**

Where it is specified in the Agreement that the Usage Charges payable by the Customer are to be determined on a usage basis, then the Customer must pay all costs incurred in relation to the Services as set out in the Agreement.

### **7. MINIMUM CHARGE BASIS**

- 7.1 This **clause 7** applies where it is specified in the Agreement that the Usage Charges payable by the Customer are based on a Minimum Charge.
- 7.2 The Customer must pay to ECT the Usage Charges. During the term of the Agreement, where the Usage Charges are less than the Minimum Charge, ECT shall invoice the Customer the Minimum Charge amount and Customer agrees that it is liable to pay that amount.
- 7.3 If the Agreement is terminated prior to the expiry of the Minimum Charge Period the Customer must pay to ECT as liquidated damages, but not as a penalty and representing a genuine pre-estimate of the loss suffered by ECT, the Minimum Charge that would be payable by the Customer to ECT for the remainder of the Minimum Charge Period or for the period from the date upon which the Agreement is terminated up to and including the End Date (whichever is the later).

## **8. SUBSCRIPTION PLAN**

- 8.1 This **clause 8** applies where it is specified in the Agreement that the Usage Charges payable by the Customer are based on a Subscription Plan.
- 8.2 The Customer must pay to ECT the Monthly Subscription Charge in accordance with **clause 5**.
- 8.3 If at the end of each month it is determined by ECT that the Customer has utilised the Services in excess of or in addition to the Services included in the Subscription Plan, then the Customer shall pay to ECT all Usage Charges incurred.
- 8.4 If at the end of the month it is determined by ECT that the Customer has not used the Services in an amount less than or equal to the Services included in the Subscription Plan, the balance of the Services shall not be carried forward to the next month and the Customer shall forfeit those Services and shall not be entitled to any refund of any part of the Monthly Subscription Charge.
- 8.5 If the Agreement is terminated prior to the expiry of the Subscription Period the Customer must pay to ECT as liquidated damages, but not as a penalty and representing a genuine pre-estimate of the loss suffered by ECT, the Monthly Subscription Charges that would otherwise have been payable by the Customer to ECT for the remainder of the Subscription Period.

## **9. UPGRADES**

- 9.1 If the Customer is on a Subscription Plan and in the opinion of ECT is of good standing, the Customer may request to upgrade its plan, at no additional fee, by sending a written notice to ECT no less than ninety (90) days prior to the expiry date.
- 9.2 The Customer cannot downgrade its plan during the term of the Subscription Plan.

## **10. COMPLIANCE WITH LAW**

### **10.1 General**

The Customer shall only use the Services in compliance with all relevant Laws.

### **10.2 Failure to Comply**

Without limitation to any other rights and remedies available to ECT, ECT reserves the right to suspend the provision of Services, terminate the Agreement or take any such other appropriate action against the Customer in the event that ECT becomes aware that the Customer has used or permitted the use of the Services in contravention of any Law including but not limited to the Privacy Act.

## **11. SUSPENSION OF SERVICES**

### **11.1 Without Notice**

ECT may, at any time without notice to the Customer suspend all or any part of the Services to:

- (a) rectify unforeseen defects or failures with the Services which, in ECT opinion, require urgent or immediate attention;
- (b) comply with any Law or direction of any Authority;

### **11.2 With Notice**

ECT may at any time upon providing the Customer with reasonable notice suspend all or any part of the Services to carry out upgrades or maintenance, or to repair the Services.

## **12. INTELLECTUAL PROPERTY**

### **12.1 Acknowledgement**

The parties acknowledge that ECT owns all Intellectual Property Rights subsisting in the Services and any documentation supplied by ECT in connection with the Services. Nothing in the Agreement transfers ownership of any of the Intellectual Property Rights subsisting in the Services or related documentation.

### **12.2 Exercise of Rights**

The Customer must not exercise any of the rights of ECT as owner of the Intellectual Property Rights subsisting in the Services and related documentation except as expressly permitted by the terms of the Agreement.

### **12.3 Modifications and Developments**

Unless otherwise agreed by the parties in writing, ECT shall own all Intellectual Property Rights in any modification, adaptation or development of the Services carried out by the Customer notwithstanding that any such modification, adaptation or development by the Customer may be in contravention of the Agreement, and the Customer shall do all such things that are necessary to confer those Intellectual Property Rights to ECT.

## **13. CONFIDENTIAL INFORMATION**

### **13.1 Confidentiality**

Where a Party ("**Recipient**") receives Confidential Information from the other Party ("**Discloser**") during the term, and after termination or expiration of the Agreement, the Recipient shall keep that information confidential and shall:

- (a) not publish or disclose the Confidential Information to any person except as permitted under the Agreement or with the prior written consent of the other Party;
- (b) not use the Confidential Information for any purpose, except where strictly necessary for the performance of its liability under the Agreement.



### **13.2 Permitted Disclosure**

- (a) The Recipient may disclose Confidential Information on a confidential basis to any officer or employee of that Party to the extent it is reasonably necessary for the performance of its obligations under the Agreement.
- (b) The Recipient shall ensure that each officer or employee that receives Confidential Information pursuant to **clause 13.2(a)** is informed of, and shall comply with, the confidentiality obligations of the Recipient under the Agreement.

### **13.3 Permitted Exemptions**

This provision shall not apply to any Confidential Information which:

- (a) is in or comes into the public domain, other than through a breach by the Recipient of an obligation of confidentiality under the Agreement;
- (b) can be shown by the Recipient to have been known to the Recipient before being disclosed to it by the Discloser;
- (c) subsequently comes lawfully into the possession of the Recipient from a third party;
- (d) is required by compulsion of Law to be disclosed to a third party; or
- (e) is disclosed to a Party's legal advisers in the course of obtaining legal advice.

## **14. SUB-CONTRACTORS**

ECT may sub-contract the provision of all or any part of the Services without the prior approval of the Customer.

## **15. GST**

- (a) All amounts payable under the Agreement or any other agreement or document entered into between the parties are GST exclusive amounts. The Customer must in addition to the stated amounts pay GST on such amounts.
- (b) ECT must give to the Customer a tax invoice in accordance with any applicable GST Law.

## **16. WARRANTIES**

### **16.1 Warranties**

The Customer represents and warrants that:

- (a) it has the power to enter into and perform its obligations under the Agreement and to carry out the transactions contemplated by it and to carry on its business as contemplated in the Agreement;
- (b) it has taken all necessary steps, including any corporate action necessary in the event that it is a corporation, to authorise its entry into and performance of all of its obligations under the Agreement and to carry out the transactions contemplated by the Agreement;
- (c) the execution and performance by it of the Agreement and each transaction contemplated by the Agreement does not and shall not in any respect violate the provisions of:
  - (i) any statute, decree, rule or regulation or any determination, order or award of any court Authority binding on it;
  - (ii) its constitution or other constituent documents;
  - (iii) any other document or agreement which is binding on it or its assets;
- (d) it is not knowingly in default or difficulty under any deed, agreement, financial commitment or other document or obligation which is reasonably likely to adversely affect the ability of the Party to comply with its obligations under the Agreement;
- (e) so far as it is aware, it is in full and ongoing compliance with all companies and securities legislation and regulations and all other legislation and regulations to which the Party may at any time and from time to time be subject;
- (f) no Insolvency Event has occurred and is continuing in relation to it; and
- (g) no litigation or administrative or other proceedings before or of any Authority have, to its knowledge, been initiated or threatened against it or any of its assets which would or might have a materially adverse effect upon its business, assets or financial condition.

### **16.2 Reliance on Warranties**

The Customer acknowledges that ECT has entered into the Agreement in reliance upon the warranties in this clause. For the avoidance of doubt, a breach of any of the warranties set out in this clause shall be a material breach of the Agreement.

## **17. INDEMNITIES AND RELEASES**

### **17.1 Indemnities**

The Customer indemnifies and must keep indemnified ECT from and against all Claims and Liabilities sustained, recovered or made against ECT or its servants, contractors or agents in connection with:

- (a) any breach of the Agreement by the Customer;
- (b) any act, omission, negligence or default caused or contributed to by the Customer, including but not limited to any damage to person or property; and
- (c) any Liability in consequence of, or resulting directly or indirectly out of, the supply, the performance or the use of the Services by the Customer.

## **17.2 Release**

The Customer agrees to use the Services at its own risk. The Customer hereby releases to the fullest extent permitted by Law, ECT and its employees, subcontractors and agents, from all Claims and demands of every nature resulting from or in relation to:

- (a) any statement, representation, warranty, promise, undertaking or agreement in connection with the provision of the Services unless the same is specified in the Agreement;
- (b) any Liability by the Customer in consequence of, or resulting directly or indirectly out of, the supply, performance or the use of the Services by any third party except to the extent the Liability arises under an express obligation or a warranty in the Agreement;
- (c) any breach, default, fault or negligence of ECT in or in connection with the Agreement or otherwise except to the extent the Liability arises under an express obligation or a warranty in the Agreement
- (d) any loss of or interruption to data or computer time, loss due to any inaccuracy, alteration or erroneous transmission of data, unauthorised access to data processed or transmitted by, to or through the Services, software errors or the infringement of any Intellectual Property Rights of the Customer; or
- (e) suspension or termination of the Services in accordance with the terms of the Agreement or as otherwise directed by any Authority.

## **18. LIMITATION OF LIABILITY**

- (a) The Customer acknowledges that it has made its own assessment as to the condition, quality, value, suitability and fitness for the purpose of the Services and has placed no reliance in that assessment on any statement, conduct or representation by ECT in relation to those matters. Any condition or warranty which would otherwise be implied in the Agreement is hereby excluded.
- (b) Where legislation implies in the Agreement a condition, warranty or guarantee, and that legislation voids or prohibits provisions in a contract from excluding or modifying the application or exercise of, or liability under, such condition, warranty or guarantee, the condition, warranty or guarantee shall be deemed to be included in the Agreement and the liability of ECT for a breach of such condition, warranty or guarantee shall be limited, at its option, to one or more of the following:
  - (i) in the case of supply of a product:
    - (A) the replacement of the product or the supply of equivalent product;
    - (B) the cost of replacing the product or acquiring equivalent product; or
    - (C) the repair of the product or the payment of the cost of having the product repaired; and
  - (ii) in the case of services:
    - (A) the supply of the services again; or
    - (B) payment of the cost of having the services supplied again.
- (c) In the event that any exclusion or limitation contained in this Agreement is held to be invalid for any reason and to the extent that ECT becomes liable for loss or damage that may lawfully be limited, then such liability shall not exceed an amount equal to the Charges (calculated on a pro-rated basis for advance payments of all Charges) invoiced to the Customer by ECT during the one month period immediately prior to the date on which the loss or damage arose.

## **19. FORCE MAJEURE**

### **19.1 Liability**

Each of ECT and the Customer shall not be liable to the other Party for any Liability incurred by that Party as a direct result of a Party failing or being prevented, hindered or delayed in the performance of its liability under the Agreement by reason of a Force Majeure Event.

### **19.2 Notice of Delay**

The Party affected by a Force Majeure Event shall as soon as practicable notify the other Party in writing of any anticipated delay due to that Force Majeure Event and use reasonable efforts to perform its obligations under the Agreement.

### **19.3 Termination**

Either Party may terminate the Agreement immediately on providing written notice to the other Party, if delay due to a Force Majeure Event continues for a period in excess of 30 days from the date of notification.

## **20. DEFAULT AND TERMINATION**

### **20.1 Consequences of Default**

If a Default Event occurs, ECT may, in its absolute discretion and without prejudice to any other rights that it may have, at any time prior to rectification of the Default Event, either:

- (a) require the Customer to immediately pay all amounts in relation to any Services which have been invoiced but remain unpaid; and/or
- (b) temporarily and indefinitely suspend the provision of Services; and/or
- (c) require the Customer to pay in advance before supplying any further Services to the Customer; and/or
- (d) confirm the Agreement as a binding Agreement and seek damages and/or any other remedies legally available to ECT; and/or

- (e) treat such Default Event as a repudiation of the Agreement by the Customer and accept the Customer's repudiation, terminate the Agreement and recover from the Customer any amount payable under **clause 20.3**.

## **20.2 Termination by Notice**

Subject to **clause 20.3**, the Agreement may be terminated by either Party upon giving the other Party not less than 30 days' notice in writing.

## **20.3 Obligations on Termination**

- (a) Upon expiration or termination of the Agreement, the Customer must pay to ECT any and all amounts due and payable to ECT under the Agreement, including but not limited to any amount due and payable under **clauses 7.3 and 8.5**;
- (b) Within 30 days following termination of the Agreement ECT shall reconcile all accounts and return to the Customer any Confidential Information of the Customer which is in the possession of ECT.

## **21. PERSONAL INFORMATION**

Each Party agrees to comply with its obligations under the Privacy Act regarding the collection, storage, use and disclosure of Personal Information.

## **22. NAMES AND MARKS**

ECT may from time to time request the Customer to grant rights to ECT for a non-exclusive royalty free license to use any company name, business name or trade mark of the Customer, whether registered or unregistered, and to identify the Customer as a customer of ECT for the purposes of providing the Services and in connection with a marketing, advertising or promotion of ECT or the services provided by ECT. The Customer may at its discretion grant the rights to a request in writing.

## **23. ASSIGNMENT**

- (a) The Customer shall not transfer any right or liability under the Agreement without the prior written consent of ECT, except where the Agreement provides otherwise.
- (b) ECT may without notice transfer any right or liability under the Agreement. Where required by ECT to affect the transfer of any such rights or liabilities, the Customer shall sign and enter into an agreement on substantially similar terms and conditions to the Agreement with the Party to which ECT transfers its rights and liabilities.

## **24. NOTICES**

- (a) Any notice to or by a Party under the Agreement shall be in writing and signed by the sender or any lawyer acting for that Party or, if a corporate Party, an authorised officer of the sender, including any director, secretary or person notified in that capacity by that corporate Party, or under the seal of or any power of attorney conferred by the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient and shall be effective for the purposes of the Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report.

## **25. GOVERNING LAW**

The Agreement shall be governed by and construed under the law of the State of Victoria, Australia.

## **26. GENERAL PROVISION**

### **26.1 Entire Agreement**

- (a) The Agreement, including all Schedules attached hereto, constitutes the final, complete and entire agreement between the parties with respect to the subject matter hereof, and supersedes any previous proposals, negotiations, agreements or arrangements, whether verbal or written made between the parties with respect to such subject matter. There are no other verbal agreements, representations, warranties, undertakings or other agreements between the parties. If Customer requires use of a Customer-form purchase order in connection with any of the Services to be performed hereunder, Customer hereby acknowledges and agrees that to the extent such purchase order contains any pre-printed or other terms and conditions, such terms and conditions, whether in addition to or in conflict with the Agreement, shall have no effect whatsoever and the Agreement shall govern the relationship between ECT and Customer.
- (b) ECT may amend at any time the provisions of this Agreement by, at ECT's election:
  - (i) posting revised terms and conditions ("**Amended Terms**") on this website ("**ECT website**"); or
  - (ii) delivering the Amended Terms to Customer at the address, fax or e-mail address provided in the Agreement (such delivery may be included in invoices for the Services delivered to Customer).All Amended Terms shall automatically be effective 30 days after such amendment is posted on the ECT website or delivery to Customer as provided above. Customer agrees to be responsible for regularly reviewing the ECT website to obtain timely notice of any such amended terms and ECT's then-current terms and conditions. By using the services after posting or delivery of amended terms, Customer will be deemed to have accepted and be bound by such amended terms. No such amendment by ECT shall serve to constitute a default or termination by ECT of this Agreement.

### **26.2 Further Assurance**

Each Party shall execute any document and perform any action necessary to give full effect to the Agreement, whether prior or subsequent to performance of the Agreement.



**26.3 Waivers**

Any failure or delay by any Party to exercise any right under the Agreement shall not operate as a waiver and the single or partial exercise of any right by that Party shall not preclude any other or further exercise of that or any other right by that Party.

**26.4 Remedies**

The rights of a Party under the Agreement are cumulative and not exclusive of any rights provided by Law.

## **26.5 Severability**

Any provision of the Agreement which is invalid in any jurisdiction shall be invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of the Agreement or the validity of that provision in any other jurisdiction.

## **26.6 Survival of Terms**

Clauses 12, 13, 16, 17, 18, 20.3, 21, 25 and 26 shall survive cancellation, termination, expiration or suspension of the Agreement.

## **27. USER ACCOUNT AND USER ACCESS SECURITY POLICY**

### **27.1 Inactive accounts**

ECT reserves the right to cancel or suspend user accounts or passcodes access where there has been no activity on the account for a period of 12 consecutive months. The user account shall remain open, and the client can contact the ECT to re-issue new accounts passcodes and passwords.

### **27.2 Strong Password / Passcode Policy**

ECT requires the Customer to use 'strong' passcodes and passwords. A strong passcode / password is one that is:

- (a) Numeric: six-ten numeric digit passcode, consisting of non consecutive or the same numbers (i.e.: 123456; 888888; 654321)
- (b) Alpha / Numeric: six-ten alpha/numeric characters; consisting of non consecutive characters or familiar name (i.e.: Sydney office; ABC123)

### **27.3 Periodic sweeps**

ECT shall periodically sweep its database to identify and change 'soft' passcodes to 'strong' passcodes/passwords. ECT may communicate to account owners advising them of this action undertaken to mitigate risk of unlawful usage of user accounts.

## **28. ADDITIONAL TERMS AND CONDITIONS**

### **28.1 Cisco WebEx Services**

If it is specified that the Services or part of the Services are Cisco WebEx Services, the Customer agrees to be bound by the Cisco WebEx Terms of Use to the extent that the Services are Cisco WebEx Services. The Cisco Webex Terms of Use can be found at <http://www.ect.com.au/Webex-TermsAndConditions.html>. By using the Cisco Webex Service, the Customer agrees that it has read, understood and shall comply with the Cisco WebEx Terms of Use.

### **28.2 Microsoft Services**

If it is specified that the Services or part of the Services are Microsoft Services, in addition to the terms and conditions contained here, the Customer must comply with the Microsoft Terms of Use located at <http://www.ect.com.au/Livemeeting-TermsAndConditions.html>. By using the Microsoft Services, the Customer agrees that it has read, understood and shall comply with the Microsoft Terms of Use.

### **28.3 Webcasting Services**

If it is specified that the Services or part of the Services are Webcasting Services then, in addition to the terms and conditions contained here, the Customer must comply with the Webcasting Services Terms of Use, which are located at <http://www.ect.com.au/Webcasting-TermsAndConditions.html>. By using the Webcasting Services, the Customer agrees that it has read, understood and shall comply with the Webcasting Service Terms of Use.

### **28.4 Adobe Acrobat Services**

- (a) If it is specified that the Services or part of the Services are Adobe Acrobat Services then, in addition to the terms and conditions contained here, the Customer must comply with the Adobe Acrobat Terms of Use located at [www.adobe.com/products/eulas/terms](http://www.adobe.com/products/eulas/terms). By using the Adobe Acrobat Services, Customer agrees that it has read, understood and shall comply with the Adobe Acrobat Terms of Use.
- (b) The Customer must pay the Adobe Acrobat annual plan fee either:
  - (i) up-front; or
  - (ii) by monthly instalments, to which the Interest Rate may apply.
- (c) The Customer must give ECT no less than 30 days' notice in writing before the expiry of the plan, if the Customer does not wish to renew the Adobe Acrobat Service. Where such notice is received by ECT, the Adobe Acrobat Service shall be automatically renewed for another term and the Customer shall be invoiced subject to **clause 28.4(b)**.

### **28.5 Conflict**

To the extent that there is a conflict between the WebEx Terms of Service, the Microsoft Terms of Service, and the Webcasting Services Terms of Use on the one hand, and the terms and conditions of the Agreement on the other hand, then the WebEx Terms of Service, the Microsoft Terms of Service and the Webcasting Services Terms of Use (as may be applicable) shall prevail only to the extent of the conflict.

## **29. FOOTNOTES, CHARGES AND FEES**

- (a) Where the Customer schedules a ReadyConference Plus call with the assistance of customer service instead of utilising ECT's online or using the on-demand service, a booking fee will apply.
- (b) A connection fee shall apply to all active lines in a conference call. An active line includes both participants and moderators.
- (c) Minimum call charges and minimum participant charges may apply to all automated audio conference calls.
- (d) New moderators may incur a setup charge.
- (e) Fees and charges are subject to change, and information is available from the tariff sheets upon request.
- (f) All other services including, but not limited to, enhanced services, moderator dial out, will be charged at default rates unless specifically outlined in the Agreement.
- (g) Other fees and charges arising out of the Customer's use of the Services may apply and these shall be specified in the Agreement.
- (h) Setup fees may be applied on selected services.