

# Terms & Conditions

## 1. DEFINITIONS

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

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

**“Agreement”** means the Details Page, these Terms and Conditions and its attached schedules and annexures.

**“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”** in relation to each separately named party means all information relating to each other separately named party, its business and the Services including, but not limited to:

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

**“Customer”** means the customer detailed in the Details Page.

**“Details Page”** means the page(s) containing the details of the Agreement attached to these Terms and Conditions.

**“DNCR Laws”** means collectively as amended *Do Not Call Register Act 2006*, *Do Not Call Register Regulations 2006*, *Telecommunications Act 1997* and *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*.

**“End Date”** means the end date specified in the Details Page.

**“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, namely 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 government or government authority, strikes at a national level or industrial disputes at a national level.

**“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).

**“Initial Period”** means the initial period specified in the Details Page.

**“Insolvency Event”** means with respect to a party, the happening 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”** 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, logo, symbol, source indication or origin appellation;
- (d) any Confidential Information;

- (e) 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;
- (f) any legal action relating to any previous item; and
- (g) 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 4% above the Bank’s Bill Swap Reference Rate (“BBSY”) being the Average Bid for 30 days (rounded to the nearest two decimal places) as quoted on the BBSY screen of Reuters on the day the quote is given and as advertised in the Australian Financial Review the following day.

“**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, costs, fees, expenses, liabilities and obligations.

“**Minimum Charge**” means the minimum amount payable by the Customer during each Minimum Charge Period.

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

“**Monthly Subscription Charges**” means the minimum amount payable by the Customer where they have entered into a Subscription Plan, during each month of the Subscription Period as specified in the Agreement.

“**Overage Rate**” means the rate of charges payable where the Services have been exceeded by the Customer as specified in Agreement.

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

“**Privacy Act**” means the *Privacy Act 1988 (Cth)* including the National Privacy Principles, as amended.

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

“**Spam Act**” means *Spam Act 2003 (Cth)* as amended.

“**Start Date**” means the later of the date specified in the Agreement and the date upon which ECT commences the provision of the Services to the Customer in accordance with the Agreement.

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

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

“**Trade Practices Act**” means *Trade Practices Act, 1974* (as amended).

“**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.

## 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 continue until the End Date, subject to earlier termination in accordance with clause 20.
- (b) that the Agreement is for a periodic term then the Agreement shall commence on the Start Date and shall continue for the Initial Period, subject to earlier termination in accordance with clause 20. Thereafter, the Agreement shall automatically continue on these Terms & Conditions subject to termination in accordance with clause 20.3.
- (c) that there is to be no fixed term then the Agreement shall commence on the Start Date and shall continue until terminated in accordance with clause 20.
- (d) 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.

## 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:
  - (i) are protected at all times from misuse, interference, damage, destruction or any form of unauthorised use; and
  - (ii) are at all times used in compliance with the Agreement; and
- (b) immediately notify ECT in the event of unauthorised use.

### 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 related documentation in a manner or for a purpose which is:
  - (i) not reasonably contemplated or not authorised by ECT; or
  - (ii) improper, immoral or fraudulent;
  - (iii) infringes any person’s Intellectual Property Rights; or
  - (iv) restricts or interferes with the provision of the 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 must not allow any other person to use the Services to send or make available information or data which:
  - (i) is indecent, obscene, pornographic, offensive, racist, menacing, illegal or confidential;
  - (ii) defames, harasses or abuses another person or entity; or
  - (iii) is misleading and/or deceptive as to the Customer's identity.
- (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 and without limitation in accordance with 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 does not comply with this clause, and shall not be liable for so doing.

### 5. CHARGES

#### 5.1 Invoice

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

#### 5.2 Payment

The Customer will pay the Charges to ECT within fourteen (14) days of receipt of each invoice.

#### 5.3 Late Payment

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:

- (a) suspend the provision of the Services; and
- (b) 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 costs incurred by ECT in relation to collection of any amounts owing, including any legal costs incurred by ECT, on a full indemnity basis.
- (c) Where a Customer pays their account by credit card a 1.5% credit card processing fee will be levied on the total invoice.
- (d) Where a Customer exceeds the contractual payment terms, a penalty may apply.
- (e) Where a Customer unduly exceeds the contractual payment terms, the service 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) Customer must notify ECT of any charge disputed in good faith, with supporting documentation, in accordance to 5.2, or Customer will be deemed to agree to such charges and no adjustments to charges or invoices will be made.

### 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 that part of the Minimum Charge determined in accordance with clause 7.3, on a monthly basis in accordance with the Agreement.
- 7.3 That part of the Minimum Charge payable each month by the Customer shall be determined in accordance with the following formula: Amount Payable = Minimum Charge / Minimum Charge Period (expressed in months).
- 7.4 If at the end of the Minimum Charge Period it is determined by ECT that the Usage Charges incurred by the Customer during the Minimum Charge Period exceeds the Minimum Charge, then the Customer shall pay to ECT all Usage Charges incurred during the Minimum Charge Period over and above the Minimum Charge.
- 7.5 If the Agreement is terminated prior to the End Date or expiry of the Minimum Charge Period the Customer must pay to 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 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 Included Services during that month, then the Customer shall pay to ECT all Usage Charges incurred during that month on account of the Services utilised in excess of or in addition to the Included Services at the Overage Rate.
- 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 Included Services the balance of the Included Services will not be carried forward to the next month and the Customer will forfeit those Included 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 End Date or expiry of the Subscription Period the Customer must pay to ECT the Monthly Subscription Charges that would be payable by the Customer to ECT for the remainder of the Subscription 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).

## 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, and must not use the Services to breach any relevant Laws.

### 10.2 Spam Act

- (a) Without limitation to clause 10.1, the Customer shall ensure that any messages or communications sent using the Services shall be in compliance with the Spam Act.
- (b) ECT may at its discretion refuse to send any broadcast communications that meet the commonly accepted definition of Spam as contemplated by the Spam Act.

### 10.3 DNCR Laws

Without limitation to clause 10.1, where applicable the Customer must comply with all requirements of the DNCR Laws when using the Services and must take all reasonable steps to ensure that its employees and agents comply with the DNCR Laws.

### 10.4 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 Spam Act, the DNCR Laws, the Privacy Act or if ECT is required to do so by any Authority.

## 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 acting reasonably 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 upgrades, maintenance or 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 will 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 will do all such things that are necessary to confer those Intellectual Property Rights to ECT.

## 13. CONFIDENTIAL INFORMATION

### 13.1 Confidentiality

Any party, who receives Confidential Information during the term, and after termination or expiration of the Agreement, 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; and
- (c) comply with all applicable privacy and consumer laws.

Both parties acknowledge that the contents of the

Agreement are strictly confidential.

### 13.2 Permitted Disclosure

- (a) The receiving party may disclose Confidential Information on a confidential basis to any of its officers and employees to the extent reasonably necessary or desirable for the purposes of the Agreement during the term of the Agreement.
- (b) The receiving party shall ensure that its officers and employees who receive Confidential Information pursuant to clause 13.2(a) shall be informed of, and comply with, the confidentiality liability of the receiving party 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, except through default under the Agreement by the receiving party;
- (b) can be shown by the receiving party to have been known by the receiving party before disclosure by the disclosing party to the receiving party;
- (c) subsequently comes lawfully into the possession of the receiving party from a third party;
- (d) is required by compulsion of Law to be disclosed to a third party; or
- (e) is disclosed to either party's legal advisers in the course of obtaining legal advice.

### 14. SUB-CONTRACTORS

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

### 15. GST

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. 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 will not in any respect violate the provisions of:
  - (i) any statute, decree, rule or regulation or any determination, order or award of any court or any governmental, judicial or public body or 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 court or governmental authority or agency or other tribunal 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 ECT's servants, contractors or agents in connection with:

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

### 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 contractors, servants 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 or out of 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;
- (c) 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 any other person; or

- (d) 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. To the fullest extent permitted by law, all conditions, representations or terms implied or imposed by State or Commonwealth laws as to fitness for purpose and quality are excluded and the Customer waives any rights it may have in respect of them.
- (b) The terms and conditions of the Agreement which exclude or limit the liability of ECT shall apply only to the extent permitted by law. Provisions of the Trade Practices Act and other statutes from time to time in force in Australia may apply warranties or conditions or impose obligations upon ECT which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. The Agreement shall be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which ECT is entitled to do so, the liability under those statutory provisions shall be limited at the option of ECT to:
- (a) in the case of the supply of goods:
- (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iii) the payment of the cost of having the goods repaired; or
  - (iv) the repair of the goods; and
- (b) in the case of services:
- (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services performed again.

## 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, 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 Default Events

The following events shall be Default Events under the Agreement:

- (a) failure by the Customer to pay or perform any Liability 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 under the *Australian Securities and Investments Commission Act 1989* or any other legislation of the Customer or its business activity or business records.

### 20.2 Consequences of Default

If a Default Event occurs, then 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 or 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 20.4.

### 20.3 Termination by Notice

Subject to clause 20.4 and in particular subject to clause 20.4(a)(ii), the Agreement may be terminated by either party upon giving the other party not less than 30 days' notice in writing.

### 20.4 Obligations on Termination

- (a) Upon expiration or termination of the Agreement, the Customer must:
  - (i) pay to ECT any and all amount due and payable to ECT under the Agreement; and
  - (ii) if the Agreement is terminated prior to the End Date or Initial Period pay to ECT an amount equal to any fixed Charges that would be payable by the Customer for the remainder of the Term or Initial Period as a genuine pre-estimate of the ECT's loss; and

- (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

### 21.1 Collection of Personal Information

ECT, its agents and resellers may collect, store, use and disclose Personal Information about the Customer for the primary purpose of providing the Services to the Customer.

### 21.2 Use of Personal Information

ECT may use the Customer's Personal Information for the purposes that are related to providing the Customer with the Services or for purposes which would be reasonably expected, including but not limited to determining whether to start, stop or limit the supply of Services to the Customer, billing and account management.

### 21.3 Disclosure

ECT may receive and disclose Personal Information or documents about the Customer to or from:

- (a) credit providers or credit reporting agencies for the purposes permitted under the Privacy Act;
- (b) law enforcement agencies to assist them in prevention of criminal activity;
- (c) ECT service and content providers, dealers, agents and resellers, or related companies for purposes that are related to providing the Customer the Services and which the Customer reasonably expects ECT to use that information for.

### 21.4 Access to and Correction of Personal Information

If the Customer is an individual, ECT will at the Customer's request:

- (a) provide the Customer with access to the Customer's Personal Information held by ECT; and
- (b) correct any Personal Information of the Customer that is inaccurate, incomplete or out of date, in accordance with the Privacy Act.

## 22. NAMES AND MARKS

ECT may from time to time request the Customer to grant to ECT 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 or 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 will 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 New South Wales, Australia.

## 26. GENERAL PROVISION

### 26.1. Entire Agreement

This Agreement, including all Schedules attached hereto, constitutes the final, complete and entire agreement between the parties with respect to the subject matter hereof, and supercedes 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 this Agreement, shall have no effect whatsoever and this Agreement shall govern the relationship between ECT and Customer.

### 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 Amendment, variation and waivers

- (a) A provision of this Agreement or a right created under it, may not be waived or varied or amended except in writing, signed by the party or parties to be bound.
- (b) 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, 19, 20, 21, 23(b), 24, 25 and 26 shall survive cancellation, termination, expiration or suspension of this 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 will remain open, and the client can contact the local ECT Client Services to re-issue new accounts passcodes and passwords.

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

ECT's requires all customers 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 will 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 Service to the extent that the Services are Cisco WebEx Services. The Terms of Service can be found at <http://www.webex.com.au/companyinfo/terms-of-service-webex.html>. By using the product you agree to these Terms of Service.

### **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 agrees to be bound by the Microsoft Terms of Service to the extent that the Services are Microsoft Services. The Terms of Service can be found at

<http://office.microsoft.com/en-us/help/HA101063371033.aspx>. By using the product you agree to these Terms of Service.

### **28.3 Conflict**

To the extent that the Cisco WebEx Terms of Service and/or the Microsoft Terms of Service conflict with clauses 1 to 27 (inclusive) of the terms and conditions of this Agreement, then Cisco WebEx Terms of Service and/or Microsoft Terms of Service, as may be applicable, will prevail.

## **29. FOOTNOTES, CHARGES & FEES:**

- (a) Rates for Services will be listed and billed in Australian Dollars for domestic service only, unless expressly stated otherwise. Where the Customer schedules a ReadyConference Plus call with the assistance of customer service instead of utilising the online portal <http://www.myrplus.com> or using the on-demand service, a booking fee will apply. A connection/disconnection fee will apply to all active lines in a conference call. An active line includes both participants and moderators. With the exception of Customers on subscription package plans, a minimum call charge will apply to all automated audio conference calls. With the exception of Customers on subscription package plans all new passcodes will incur a setup charge.
- (b) All other services including, but not limited to, enhanced services, moderator dial out, international fax, sms, voice will be charged at default rates unless specifically outlined in this agreement.
- (c) ECT reserves the right to charge the Customer for each attempt by ECT to send a fax message where any transmission occurs, whether or not the transmission is completed, such as instances where someone answers the call or transmission is interrupted before completion. A fax retry fee applies for all fax transmissions.
- (d) Where it is specified that the Fax Services are to be charged on a 'per page' basis, the Customer will be charged at the relevant rate for each fax page transmitted / received where the transmission / receipt of that fax page is less than 60 seconds. Where the time for transmission / receipt of a fax page exceeds 60 seconds, then the Customer will be charged as if each period of 60 seconds or part thereof was one fax page.
- (e) If the Customer utilises the bureau services of ECT additional charges may apply, for details of the charges please refer to your account on the myPortal website <https://ectmessagingportal.com.au/welcome.do> or contact ECT.
- (f) Setup fees may be applied on selected services.