



Terms of Service

Version: 18.07.2014

These Terms of Service are effective on and from July 21, 2014, and are subject to periodic revisions and updates.

YOUR USE OF SERVICES PROVIDED BY PGI, INCLUDING ANY BETA SERVICES AND/OR FREE SERVICES, (THE "SERVICES") IS AT ALL TIMES CONDITIONED UPON YOUR AGREEMENT TO THESE TERMS OF SERVICE, WHICH ARE UPDATED BY PGI FROM TIME TO TIME.

1. Services and Pricing.

- (a) Sales to the Customer.** The Customer specified on page one of this Agreement ("You", "Your") will pay Enterprise Care Teleconferencing ("ECT") for the Services at the "Customer Rates" and "Standard Rates" (as below defined) and according to these Terms of Service (the "Terms") and the Service Agreement signed by You (collectively referred to as this "Agreement"). For purposes of this Agreement, Customer Rates are those rates which have been specifically negotiated between You and ECT, and Standard Rates are for those Services which are not subject to Customer Rates as well as the rates included on ECT's standard price list and all applicable taxes, fees and surcharges which may be obtained from your sales representative. Charges for the use of Services are invoiced on a monthly basis. Software license fees shall be invoiced in advance and usage fees are invoiced in arrears. You acknowledge and agree that ECT reserves the right to change pricing or modify or discontinue any or all of the Services and any related dial-in numbers or other methods of access at any time for any reason, without notice. Without limiting the foregoing, ECT reserves the right, in its sole discretion, to change or institute new or additional charges and/or fees for access to or use of Services (including for ancillary services, new or additional features and/or "apps") at any time as provided in this Agreement.
- (b) Payment Terms, Taxes and Other Charges.** ECT's standard payment terms are 30 days from receipt of invoice. You must notify ECT of any charge disputed in good faith, with supporting documentation, within 45 days from the date of receipt of invoice, or You will be deemed to agree to such charges and no adjustments to charges or invoices will be made. You remain responsible to pay undisputed charges by the due date. Without limiting any other rights herein, ECT may suspend Services if ECT determines that Your previous payment record so warrants with regard to ECT's standard payment terms. You will pay any collection costs, including reasonable attorneys' fees, and other expenses incurred by ECT to collect any such sums due under this Agreement. You will pay, and ECT reserves the right to collect in arrears taxes (other than taxes based upon ECT's net income), by any government authority upon or with respect to the Services provided. If You claim an exemption from charges, You must provide ECT with a current, valid exemption certificate from the applicable government authority.
- (c) Termination for Cause.** This Agreement may be terminated by the non-breaching party upon a breach by the other party of a provision of this Agreement and such breach is not cured within Sixty (60) days after written notice.
- (d) Termination for Convenience.** If You have elected Services not subjected to a term commitment, You may terminate such Services and this Agreement by providing at least thirty (30) days prior written notice to ECT of such intention to terminate. If You have elected Services for a fixed number of months or years (a "Subscription Term"), this Agreement will be deemed to automatically renew for successive terms ("Renewal Terms" and together with the Subscription Term, the "Term") equal to the length of such Subscription Term for the Services, unless either party delivers written notice of intention not to renew at least Sixty (60) days prior to the expiration of the Subscription Term or any Renewal Term.
- (e) Effect of Termination.** You are not entitled to any pro-rata refund of software license fees paid in advance. In the event that You terminate the Services (for any reason other than due to breach by ECT) You remain responsible for any and all fees due and incurred through the Termination Effective Date. In addition, (for any reason other than due to breach by ECT) where You have entered into a fixed monthly minimum commitment, You are responsible to pay the remaining fixed term of the monthly minimum commitment immediately upon termination.

2. Proprietary Information, Customer Data and Privacy.

- (a) Proprietary Information.** Each party and its employees and agents shall at all times, during the term of this Agreement and thereafter, keep in trust and confidence all information relating to the other party that is of a confidential and proprietary nature ("Proprietary Information") and shall not use such Proprietary Information other than in the course of their duties under this Agreement, nor shall either party or its employees and agents disclose any of such Proprietary Information to any individual or entity without the other party's prior written consent, or if required by law. Each party acknowledges that any such Proprietary Information received by the other party shall be received as a fiduciary of the other party. Each party further agrees to immediately return to the other party or destroy all Proprietary Information in its possession, custody or control in whatever form held (including all copies of all written documents relating to that) upon termination of this Agreement or at any time, or from time to time, upon the request of the other party.



Terms of Service

Version: 18.07.2014

(b) Customer Data. ECT acknowledges Your rights, title, and/or interest in and to all electronic data or information uploaded, stored, recorded, retrieved or transmitted by You through its use of the Service ("Customer Data") and such Customer Data is deemed to be Your confidential information under this Agreement. ECT shall not access any Customer Data, except to respond to service or technical problems which may arise and/or at Your request, or otherwise compelled by law. If ECT is compelled by law to disclose Your Proprietary Information or Customer Data, ECT shall provide You with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Your cost, if You wish to contest the disclosure. Customer Data will be protected by ECT with at least the same protective precautions that ECT takes to protect its similar proprietary or confidential information and such Customer Data shall be segregated from any other service which ECT may provide to other customers. ECT is not obligated to provide a disaster recovery plan in respect to Customer Data and ECT accepts no responsibility to You for the recovery of deleted Customer Data. ECT reserves the right to remove any Customer Data that constitutes Objectionable Material or violates any Service Provider rules regarding appropriate use, but is not obligated to do so.

(c) Privacy. Except as otherwise stated in this Agreement, the Services and any personal information received from You (including name and email address of its designated Named Users), is subject to ECT's Privacy Policy <http://www.ect.com.au/files/Privacy%20Policy%20-%20ECT.pdf>. In order to provide the Services, You acknowledge that it is necessary for ECT to disclose such personal information received from You and/or Your Named Users to ECT's related entities in other countries (including the United States of America and other overseas locations where ECT is able to maintain strict control of the information), and You hereby consents to such transfer. Notwithstanding the above, the transfer of personal information shall not affect ECT's obligations at law, in relation to such personal information.

3. Intellectual Property.

(a) The Services provided under this Agreement and all associated intellectual and proprietary rights are the sole property of ECT and/or its affiliates or suppliers, and except as required for use of the Services, You have no right or license to use any of the trademarks or trade names owned by, licensed to or associated with ECT (the "ECT Marks") during the term of this Agreement without express written consent from ECT. Despite prior approval, You will immediately cease and desist using the ECT Marks upon notice from ECT or upon termination of this Agreement for any reason. Any use by You of the ECT Marks other than as described above will constitute a breach of this Agreement for which, in addition to any other remedies available at law or in equity, ECT may terminate this Agreement.

(b) You are being granted a limited, non-exclusive, non-transferable, non-sublicensable revocable right to use Services, and any software associated with the Services. All other rights are reserved by ECT, and You agree that it shall not remove, obscure or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the Services.

(c) You acknowledge and agree that all third-party information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which You may have access to as part of, or through the use of the Services are the sole responsibility of the individual or entity from which such content originated ("Third-Party Content"). Such Third-Party Content may be protected by intellectual property rights that are owned by the sponsors or advertisers who provides such Third-Party Content to ECT (or by other individuals or entities on their behalf). You shall not modify, rent, lease, loan, sell, distribute or create derivative works based on this Third-Party Content (either in whole or in part). ECT reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Third-Party Content from the Services. ECT may also provide tools (but has no obligation) to filter out explicit content and You understand that, by using the Services, you may be exposed to Third-Party Content that You may find offensive, indecent or objectionable. You use the Services at Your own risk.

4. Indemnities

You shall indemnify and defend ECT, its officers, directors, employees, affiliates and its suppliers from any claims, losses, damages, penalties or costs (including without limitation reasonable attorneys' or expert witness fees) to the extent caused by or contributed to by Your (or any individual or entity accessing the Services through Your account): (i) use of the Services; (ii) violation or alleged violation of any applicable laws or regulations with respect to the Services; or (iii) infringement of any intellectual property rights of any third party. The obligations contained in this paragraph shall survive any termination or suspension of the Services contemplated herein, the expiration or termination of this Agreement and final payment.

5. Limited Warranty

All Services provided pursuant to this Agreement are provided or performed on an "as is", "as available" basis and Your use of the Service is solely at Your own risk. You acknowledge that Services may not reliably work in some international jurisdictions that regulate particular telecommunication or data services or where the local government actively blocks or otherwise interferes with cross-border data flows. Any condition or warranty which would otherwise be implied in this



Terms of Service

Version: 18.07.2014

Agreement is hereby excluded. Where legislation implies in this Agreement any condition or warranty, and that legislation prohibits provisions in a contract excluding or modifying the application of or liability under such condition or warranty but allows the liability thereunder to be limited, the condition or warranty shall be deemed to be included in this Agreement and ECT's liability for any breach of such condition or warranty shall be limited, at its option, to one or more of the following the supplying of the services again.

6. Limitation of Liability

Except in relation to liability for personal injury (including sickness and death) caused by the negligence or wilful default of ECT, ECT shall have no liability to You in respect of any loss or damage (including without limitation loss of revenue, loss of profits, loss of goodwill, loss of anticipated savings, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair or replacement) loss of opportunity or expectation loss of any other form of consequential, special, indirect, punitive or exemplary loss or damage) which may be suffered or incurred in respect of services supplied pursuant to this Agreement or in respect of a failure or omission on the part of ECT to comply with its obligations under this Agreement.

7. Notices.

All other notices, requests, claims, demands and other communications hereunder ("**Notices**") shall be in writing in English and shall be given (i) by delivery in person (ii) sent by registered mail or (iii) by electronic mail to the address of the party specified in the Service Agreement or such other address as either party may specify in writing. Notifications to ECT, including without limitation all termination notices, shall be addressed to: Enterprise Care Teleconferencing ("ECT"), Level 2, 408 St. Kilda Road, Melbourne, Victoria 3004 and duplicate of such notice may be submitted by electronic mail. If You have a designated ECT Sales Representative, You must also provide a written copy of any termination notice to such Sales Representative; provided, such copy does and shall not relieve You of Your obligation to follow any other noticing requirements as set forth in this Agreement. Your notices for billing or account management purposes will be addressed to the address (postal and/or e-mail address) provided to ECT.

8. Miscellaneous.

If any provision herein is held by a court to be illegal, invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of the illegality, invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability in any other jurisdiction. Any failure by a party to comply with this Agreement may be waived by the other party, but any such waiver must be in writing signed by the waiving party and will not be deemed a waiver of any subsequent failures. Each party enters into this Agreement solely for its own benefit and purpose, and except for ECT's suppliers, this Agreement in no way confers any rights upon, or imposes obligations on either of the parties toward, any third party, including but not limited to any recipient of content transmitted through the Services. This Agreement shall be binding upon and inure to the benefit of the parties' successors, legal representatives and authorized assigns. ECT may assign its rights and obligations under this Agreement to an entity that either now or in the future controls, is controlled by or is under common control with ECT or as a consequence of merger, acquisition, change of control or asset sale. You shall not assign Your rights and obligations under this Agreement without ECT's written consent. All sections in this Agreement intended to survive any cancellation, termination, expiration or suspension of this Agreement will so survive. This Agreement shall be governed by, and construed and enforced in accordance with the laws of New South Wales applicable to agreements made and to be performed therein, without regard to any conflicts or choice of law rules. The parties agree to submit to the exclusive jurisdiction of the courts in New South Wales to resolve any disputes arising hereunder.

9. Entire Agreement.

This Agreement 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.