

These Terms of Use were last revised January 31, 2013, and are subject to periodic revisions and updates.

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

## 1. Services and Pricing.

- (a) Sales to the Customer.** The Customer specified in a Service Order Form ("You", "Your") will pay Enterprise Care Teleconferencing (Asia) Pty Ltd (ABN 42 122 047 492) ("ECT") for the Services at the "Customer Rates" and "Standard Rates" (as below defined) and according to these Terms of Use (the "Terms") and the Service Order Form 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 recorded in a Service Order Form, 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. Charges for the use of Services are invoiced on a monthly basis, Service Subscription Charges (defined below in clause 1(c)) shall be invoiced in advance, usage fees is billed monthly in arrears, and payments are due within 30 days after date of invoice. ECT may (at its sole discretion) agree to a request by You to invoice for Service Subscription Charges annually in advance, in which case, ECT will invoice the Service Subscription Charges for the entire year in advance and You will continue to receive an invoice each month for usage. Service Subscription Charges paid in advance, monthly or annually, cannot be applied to usage fees. Past-due balances not reasonably disputed in good faith as herein provided shall be subject to an interest charge of 1.5% per month computed from the due date of each invoice previously issued until the past-due amount is paid, or the maximum rate legally permitted, whichever is less. 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 must notify ECT of any charge disputed in good faith, with supporting documentation, within 14 days from the date 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. 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) Taxes and Other Charges.** ECT may, in its sole discretion, change its payment terms or billing methods at any time. Without limiting any other rights herein, ECT may suspend Services if ECT determines that Your previous payment record so warrants. You will pay, and ECT reserves the right to collect in arrears, all sales, use, consumption, goods and services, excise or other taxes (other than taxes based upon ECT net income), fees, charges for universal support mechanisms (including without limitation any and all federal or state Universal Service Fund charges (if applicable)) or other charges of any nature whatsoever, now or hereafter imposed or assessed on ECT, by any foreign, federal, state/provincial, county or local 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 regulatory authority.
- (c) Charges and Minimum Commitments.** You will pay ECT monthly service charge per Named User (if applicable), as such term is defined in Section 5(b) below ("Service Subscription Charge(s)") in addition to any additional fees or charges for use of the Services, including without limitation any set-up fees, overages fees, per minute fees (including dial out and local access per minute rates) and other fees or charges associated with use of the Services provided ("Usage Charges") and not otherwise designated as specifically and expressly waived pursuant to an applicable valid promotional offer (as determined by ECT in its sole discretion). ECT will issue You with a valid tax invoice by electronic mail for each applicable period. If you require a paper invoice to be issued, a paper invoice fee will apply. You will be billed for and will pay all invoices, in their entirety, for each applicable period during the term of this Agreement. In the event You agree to a minimum commitment for use of the Services during the Term ("Minimum Commitment") and do not meet its minimum commitment in any given month, quarter or year, as applicable, ECT will invoice for, and You will pay, upon receipt of valid tax invoice, the shortfall equal to the difference between the Minimum Commitment during each applicable term less any payments for actual usage of the Services by You during the applicable period. For commitments based on minutes, the shortfall amount in dollars shall be calculated based upon agreed rates using the proportion of Services actually used by You during the applicable period. Only the per-minute usage of the ECT meeting solutions shall be applicable to the minimum commitment. For the avoidance of doubt, You are not and will not be entitled to any partial month billing or credits or refunds of any kind, including without limitation in the event You elect to not use the Services during any billing period. Customer Rates (excluding Service Subscription Charges) and Standard Rates are subject to change at any time (and in the case of Customer Rates, only after ECT has provided no less than 30 days' notice, which may include a statement to that effect on Your invoice). Notwithstanding the preceding clauses, You acknowledge and agree that each calendar year ECT may increase the all rates by the greater of the CPI rate, or 5.9% without prior notice to You.
- (d) Credit Card Payments.** Notwithstanding any other provision herein, for any fees and/or charges paid by credit or debit cards, You agree if payment is not received by ECT from the card issuer or its agents, then You will pay all amounts due upon demand by ECT. Each time You use the Services, or allows or causes the Services to be used, You agree and reaffirm that ECT is authorised to charge Your designated card in connection with the Services. You further agrees that ECT may submit additional charges for use of the Services each month, in accordance with this Agreement, without further authorization, until You provides prior written notice (in accordance with ECT verification procedures, as may be established by ECT from time to time in its sole discretion) that You terminates this authorization or desires to change its designated card. Such notices will not affect charges submitted before ECT reasonably could act on such notice. When You provide Your card information to ECT (or its designated licensees or subcontractors), You represent and warrant to ECT that You are the authorised user of the designated card. You agree to promptly notify ECT of any changes to the designated card account number, its expiration date or billing address, as applicable, and agree to notify ECT if such designated card expires or is cancelled for any reason. For the avoidance of doubt, the designated card account holder is responsible for all charges incurred, including applicable taxes, and all purchases made by such account holder or anyone that uses the card. Without limiting any other remedy herein, if recurring fees are not paid in a timely manner, or if ECT is unable to process Your transaction(s) using the designated card information provided, ECT

reserves the right to suspend and/or terminate all or any part of the Services.

- (e) **Upgrades.** Where permitted by ECT, at its sole discretion and subject to You meeting all pre-conditions for the upgrade offer, You may upgrade subscription plans for Services. Nothing herein shall be deemed to require ECT to permit and/or allow any upgrades. For the avoidance of doubt, to the extent permitted by ECT and subject to You meeting all pre-conditions as determined by ECT, You shall remain responsible for all fees and charges due and incurred for Services provided under an existing subscription plan through the upgrade effective date and is not and will not be entitled to any partial months' credits or refunds of any kind as a result of the upgrade. After any upgrade effective date, You shall be responsible for the increased fees and charges associated with the upgrade, including without limitation any new and/or additional charges associated therewith, which may include without limitation, for any overages.
- (f) **Additional Billing Terms.** Services will be billed in Australian dollars, unless expressly stated otherwise by ECT or agreed upon by the parties, in writing. Without limiting any other applicable fees and charges and unless expressly waived by ECT in writing, You will be charged average fees for minutes used and exceeding minimums available to You pursuant to specific service plans offered from ECT and agreed to by You. Pooling of audio minutes from multiple Named Users (as the term "Named User" is defined in Section 5(b) below) is not permitted. International rates and surcharges apply on a per minute basis for all calls originating outside Australia and/or international dial-out. Where Your monthly invoice amount is less than \$25, a minimum invoice charge of this amount will apply. Should there be no activity on Your account in that month, then no invoice or charge will apply unless You have agreed to a Service Subscription Charges or Minimum Commitment. For calls with less than three (3) participants (including the Named User hosting the call), a minimum participant fee will apply. Call set-up and disconnect charges also apply to all inbound and outbound legs of all calls. ECT rounds completed calls to the next full minute on a per participant basis and rounds the price of the call to the nearest whole cent. All other services which are not specifically listed on a service order form such as moderator set-up, cancellation, rescheduling and no-show fees for Operator Assisted calls ("**Enhanced Services**"), are subject to ECT's Standard Rates, which are available upon request from Your ECT Sales Representative. Other charges may apply to Your use of the Services, which shall be specified on your Service Order Form.

## 2. Term and Termination.

- (a) **Term.** This Agreement is effective on and its term shall begin from the start date specified in the Service Order Form ("Start Date") and shall continue unless and until terminated as provided herein. 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 Services, unless either party delivers written notice of intention not to renew at least 60 days prior to the expiration of the Subscription Term or any Renewal Term. For all Services without a fixed number of months or years, this Agreement will remain in full force until terminated as provided herein.
- (b) **Promotional Term; Free Trial Term.** If You use Services pursuant to a promotional offer granting free Services and/or a free trial for Services, which may include without limitation the waiver of certain Service Subscription Charges and/or Usage Fees as defined by a particular promotional offer ("**Free Services**"), You will receive use of the Free Services solely for a limited period of time and all use of Free Services shall be subject to the terms herein and any and all other restrictions, limitations and conditions identified or communicated to You with the specific Free Services offer, including without limitation, You are and will remain liable for all charges not otherwise designated as specifically and expressly waived pursuant to the applicable promotional offer. Notwithstanding any other provision in this Agreement, all Free Services are provided solely as an accommodation to You, and ECT reserves the right, at all times and in its sole discretion, to terminate or modify any Free Services at any time without notice, including without limitation for any abuse of the Free Services and/or Your failure to pay fees and charges not otherwise designated as specifically and expressly waived pursuant to the applicable promotional offer. For the avoidance of doubt and notwithstanding any other provision herein, in the event any promotion has Customer Rates not implemented until a date following the agreed Start Date (as specified in a Service Order Form) ("Rate Implementation Date") and ECT agrees to make available any Free Services to You prior to such Rate Implementation Date, Your initial term for services shall be extended by the length of the Free Services period; provided, however, if such Free Service period would result in Your initial term ending in the middle of a billing cycle, the initial term shall be extended to the last day of such billing cycle.
- (c) **Beta Version.** With respect to any Beta version of any of the Services (the "Beta Services") made available to You for purposes of evaluation and feedback, You acknowledge that the Beta Services may contain bugs, errors and other problems and is provided to them "as-is." To the extent permitted by law, ECT disclaims any warranty or liability obligations to You of any kind with respect to the Beta Services. You further acknowledge the importance of communication between ECT and You during their use of the Beta Services and hereby agree to receive related correspondence and updates from ECT and its suppliers. In the event You request to opt-out from such communications, the use of the Beta Services may be cancelled. You acknowledge that ECT has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that ECT has no express or implied obligation to You to announce or introduce the Beta Services. With respect to the Beta Services, this subsection shall supersede any other terms and conditions contained herein, but only to the extent necessary to resolve conflict. In addition to and without limiting any other rights or remedies ECT has, if ECT determines, in its sole discretion, that You have violated any conditions of and/or limitations on the Beta Services, ECT reserves the right to immediately terminate the Beta Services.
- (d) **Termination for Cause.** Either party may terminate this Agreement at any time in the event that the other party breaches any provision of this Agreement in any material respect and fails to cure such breach within 30 days after receipt of written notice of such breach. Terminations by ECT shall be effective as of the date designated in the termination notice. Termination by You pursuant to this Section 2(d) shall be effective as provided in Section 2(f) below. Notwithstanding the foregoing, ECT may terminate this Agreement and/or suspend the provision of Services immediately: (i) for illegal, fraudulent, improper or abusive use of the Services (including without limitation Your use of the Services in contravention of Section 5, to be determined in ECT's sole discretion); (ii) if deemed reasonably necessary by ECT to prevent interruption or disruption to ECT's network, its business or other customers; (iii) if any portion of an invoice not reasonably disputed in good faith as herein provided remains unpaid when due; or (iv) for breach, not subject to cure. ECT shall not be liable to You or any third party should ECT exercise its right to discontinue the Services, in whole or in part, or terminate this Agreement pursuant to this Section 2(d).
- (e) **Termination for Convenience.** If You have elected Services on a month-to-month basis, 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, otherwise, You must provide at least sixty (60) days prior written notice to ECT and, in all cases, termination by You will be effective as provided in Section 2(f) below. For the avoidance of doubt, ECT has the right, at all times and in addition to all other termination rights permitted by this Agreement, to terminate the Services and/or this Agreement for its convenience and without liability by providing at least sixty (60) days prior written notice to You, with such terminations effective as of the date designated in the applicable termination notice.

**(f) Effect of Termination.** Unless otherwise provided by ECT, in writing, all terminations by You require a minimum of three (3) to five (5) business days to process following ECT's receipt of a valid termination notice from You. If accepted, Your termination will become effective on the last day of the month in which the notice period ends (the "Termination Effective Date"). In the event that You terminate the Services (for any reason other than due to breach by ECT) or if ECT terminates for any reason pursuant to its rights in this Agreement, You remain responsible for any and all fees and Charges due and incurred through the Termination Effective Date and will not be entitled to any partial month credits or refunds of any kind (including but not limited to any set-up fees or other service charges). In addition, where You have elected Services for a fixed number of months, quarters or years, You shall pay to ECT as liquidated damages, but not as a penalty and representing a genuine pre-estimate of the loss suffered by ECT, the balance of the Service Subscription Charges or Minimum Commitment that would otherwise be payable by You for the remainder of the Term provided, however, only Service Subscription Charges or Minimum Commitment shall apply to the reduction of the Total Term Commitment and no payments over and above the Service Subscription Charges or Minimum Commitment, including without limitation any overage or other per-minute charges, shall apply to or in any way be credited toward the shortfall amount for this Agreement. If You have a designated ECT Sales Representative, You must also provide a copy of any termination notice to such Sales Representative; provided, such copy does and shall not relieve You of its obligation to follow any other noticing requirements.

### **3. 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. 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.

**(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 at <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.

### **4. Intellectual Property; Marketing; Images and Links.**

**(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, solely for online meetings and web conferencing and collaboration. 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.

**(d)** You understand that by using the Services with a webcam or other photographic or video device and/or a microphone, images and audio will be transmitted to users. You hereby release, discharge and agree to hold harmless ECT, its officers, directors, employees, affiliates and its suppliers from and against any and all claims and demands, including but not limited to, any claims for copyright infringement, defamation, invasion of privacy or right of publicity, arising out of or in connection with any use of the images and/or audio.

**(e)** Any ideas, suggestions, comments and/or other feedback You provide to ECT ("Feedback") shall be deemed to be non-confidential and ECT shall be free to use such information on an unrestricted basis. You should only provide specific Feedback on ECT's existing Services

and should not include any ideas that ECT's policy will not permit it to accept or consider. ECT or any of its employees do not accept or consider unsolicited ideas of any kind, including ideas for new or improved services, products or technologies, enhancements or new service names. The following terms shall apply to submissions of all Feedback: You agree that: (1) all submissions and their contents will automatically become the property of ECT, without any compensation; (2) ECT may freely and irrevocably use, disclose, reproduce, license, sublicense, distribute or redistribute and otherwise commercialize the submissions and their contents for any purpose and in any way throughout the world, without royalty; (3) there is no obligation for ECT to review the submission; and (4) there is no obligation to keep any submissions confidential. For the avoidance of doubt, You will not submit any Feedback to ECT that (1) You have reason to believe is subject to any patent, copyright, or other intellectual property claim or right of any third party; or (2) that is subject to license terms that seek to require any ECT product incorporating or derived from any Feedback, or other ECT intellectual property, to be licensed to or otherwise shared with any third party.

## 5. Customer Registration, Named Users.

- (a) To use the Services, You must complete the sign-up/ registration process, which includes, without limitation, signing a Service Order Form, providing a valid email address, agreeing to be bound by the terms applicable to the use of the Services and meeting such other requirements as ECT directs. You agree to maintain and update Your registration information as required to keep it current, complete and accurate. If ECT discovers that any of Your registration information is inaccurate, incomplete or not current, ECT may suspend and/or terminate Your right to access and receive the Services. ECT further retains the right to reject a registration application in its sole discretion and without a requirement to provide a reason. Without limiting the foregoing, ECT may refuse the Services to any individual or entity who has cancelled any number of previous accounts.
- (b) Only Named Users (as below defined) may schedule conferences using the Services, and there may be only one user/employee designated to any Named User licenses to be used in connection with the Services. For the avoidance of doubt, Named User licenses cannot be shared among multiple individuals and separate Named User licenses must be purchased for each individual. Named Users may only include up to the total number of Maximum Meeting Participants in any single conference. For the purposes of this provision and the Services, a "Named User" is an individual designated and identified by You as an organizer/administrator who is authorized to schedule conferences using the Services and "Maximum Meeting Participants" means the maximum number of meeting participants, including the Named User, that may be in a conference using the Services at the same time as designated by ECT. Only one conference using the Services may occur at any given time (i.e. no concurrent meetings) per licensed Named User. Named Users shall not combine with other Named Users or otherwise expand a conference using the Services scheduled by a Named User to allow more than the Maximum Meeting Participants. For each conference using the Services scheduled by a Named User, the Named User must (1) initiate or schedule the conference; (2) host the conference by entering as a "Host"; and (3) act as an organizer of the conference through use of their organizer identification. You are at all times responsible for monitoring and maintaining the use of the Named User licenses within the forgoing parameters, and You shall indemnify ECT in the event a claim is brought or damages are incurred due to Your misuse of the Named User license. A Named User designation shall not be transferred to another employee except upon (a) termination of the Named User's employment with You, or (b) in all other instances, ECT's express prior written approval.
- (c) You may increase or decrease its number of Named Users for the Services, at any time, by nominating an employee to administer Your account ("Account Administrator") and having that person submit a request in writing (which includes via email) to Your Sales Representative requesting an increase or decrease and specifying the number. All requests for increases in Named Users by You will become an integral part of this Agreement and will be charged as the same rate as the existing Named Users licenses, but will not impact the Total Term Commitment (as defined in Section 1(c) above), and You will be billed for such increase in Named Users at the Customer Rate, beginning as of the date of selection. All selections for decreases in Named Users will become an integral part of this Agreement, but will not impact the Total Term Commitment (as defined in Section 1(c) above), and shall not fall below the number of Named Users initially subscribed. Your invoice will reflect the reduction in the number of Named Users, on the next month's invoice following the month in which such decrease selection was submitted. For the avoidance of doubt, all selections and resulting Named Users shall be subject to the terms of use of this Agreement, You are fully responsible and liable for any and all written requests received by ECT from the Account Administrator, and such requests will be deemed Your signature and authorization for such orders.
- (d) You acknowledge that ECT has no control over the content of information transmitted by You through the Services (whether visual, written or audible) and that ECT does not examine the use to which You put the Services or the nature of the information You or Your users send or receive. ECT reserves the right to suspend or terminate immediately any Your or Named User account or activity that is disrupting or causing harm to ECT's computers, systems or infrastructure or to other parties, or is in violation of any state or federal laws relating to unsolicited commercial messages or otherwise.

## 6 Appropriate use of the Services

- (a) You shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than Users or as otherwise contemplated by this Agreement. Further, You will not (i) send unsolicited commercial messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, or otherwise unlawful material, including material that is harmful to children or violates third party privacy rights; (iii) send, or cause to be sent any harmful program, code or device whereby, when it operates in its intended manner, the result is a corruption of data stored or processed by the Services or deactivation or disabling of the Services or other hardware or software; or the cessation of processing of the Service or other hardware or software; (iv) interfere with or disrupt the integrity or performance of the Services or the data (other than Customer Data) contained therein; or (v) attempt to gain unauthorized access to the Services or its related systems or networks. You will be responsible to ensure that its Named Users do not submit any material which would violate this clause.
- (b) ECT may, at its option, adopt rules for permitted and appropriate use and may update them from time to time on the ECT Website (as defined below) and You and Named Users will be bound by any such rules. You agree to notify ECT immediately if there has been an unauthorized use of its usernames and/or any access numbers, keys and/or passwords/passcodes or any other breach of security, and shall be liable for fraudulent charges until such time as You have notified ECT to suspend any compromised usernames, access numbers, keys and/or passwords/passcodes. You acknowledge that ECT may from time to time monitor for quality assurance and fraud detection and may further gather system data. Further, and notwithstanding confidentiality provisions herein, ECT may disclose information about Your use of Services to satisfy any law, regulation, government agency request, court order, search warrant, subpoena or other legal process.

- (c) Use of conference recording or taping features of the Services may subject You to laws or regulations. You acknowledge and agree that You will not record or tape any Web, video or telephone conversation in connection with the Services unless You are in compliance with all applicable laws relating to the recording of communications and protecting the privacy of communication for all parties to the conversation. ECT has not and is not expected to provide You with any analysis, interpretation or advice regarding Your compliance with all applicable laws, and You are solely responsible and obligated to provide any required notifications to participants prior to commencement of conferences.

## 7 Indemnities.

- (a) 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.
- (b) ECT shall defend You against any and all claims, losses, damages, liabilities or costs of any nature (including without limitation reasonable attorneys' fees) brought against You to the extent such actions are brought by a third party and based upon a claim that the use of the Service by You (excluding any Services resold by ECT to You or for which ECT is a fulfilment agent) as authorized herein directly infringes any intellectual property rights of a third party. ECT will pay those costs and damages finally awarded against You in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action, provided, ECT shall not be responsible for any compromise or settlement made without ECT's prior written consent and You shall not enter into any settlement that subjects ECT to any obligations to such third party without ECT's prior written approval. ECT's obligations under this section are expressly conditioned on You providing ECT (i) prompt written notice of any infringement claim; (ii) sole control of the investigation, defence, and settlement; and (iii) full cooperation in connection with any claim. Notwithstanding the foregoing, ECT will have no obligation under this provision or otherwise with respect to any infringement claim based upon (i) any unauthorized use, reproduction, modification or distribution of the Service or related software by You or a third party authorized by You to use the Service; or (ii) any use of the Service in combination with other products, equipment, software, or data not supplied by ECT; or (iii) any use of the Services for illegal or fraudulent purposes or in a manner not contemplated by this Agreement. Notwithstanding any other provisions hereof, the foregoing indemnity shall not apply with respect to any infringement based on activities occurring subsequent to its receipt of notice of any claimed infringement unless ECT shall have given You written permission to continue to use, market and/or distribute the allegedly infringing Services.

## 8. Warranty and Limitation of Liability.

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. You warrant that it has not relied on any representation made by ECT which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by ECT. Any condition or warranty which would otherwise be implied in this 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.

## 9 Liability of ECT

Except in relation to liability for personal injury (including sickness and death) caused by the negligence or wilful default of ECT and the indemnity specified in clause 7(b), 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. 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 You by ECT during the one month period immediately prior to the date on which the loss or damage arose.

## 10 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 Order Form 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 (Asia) Pty Ltd, Attn: Legal Department, GPO Box 1613, Sydney, NSW, 2001, Australia 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 in the Service Order Form.

## 11. Additional terms and conditions for Resold Services

- (a) **Cisco WebEx Services.** If it is specified that the Service includes one or more Cisco WebEx Services, which are resold by ECT to You, then in addition to these Terms, You agree to be bound by the Additional Terms of Service for use of Cisco WebEx which are published at [http://www.ect.com.au/files/Additional\\_Terms\\_of\\_use\\_of\\_Cisco\\_Webex\\_Services.pdf](http://www.ect.com.au/files/Additional_Terms_of_use_of_Cisco_Webex_Services.pdf). By using the Cisco Webex Services, You agree that it has read, understood and shall comply with these additional terms and expressly acknowledges that it has read and understood the automatic renewal terms specified in clause 2 of the additional terms.

- (b) Microsoft Office Live Meeting.** If it is specified that the Service includes Microsoft Office Live Meeting services, which are resold by ECT to You, then in addition to these Terms, You agree to be bound by the Additional Terms of Service for use of Microsoft Office Live Meeting which are published at [http://www.ect.com.au/files/Additional\\_Terms\\_of\\_use\\_of\\_Microsoft\\_Services.pdf](http://www.ect.com.au/files/Additional_Terms_of_use_of_Microsoft_Services.pdf). By using the Microsoft Office Live Meeting Services, You agree that it has read, understood and shall comply with the additional terms.
- (c) Adobe Acrobat Services.** If it is specified that the Services or part of the Services are Adobe Acrobat Services, which are resold by ECT to You then, in addition to these Terms You must comply with the End User License Agreement (“EULA”) published at [www.adobe.com/products/eulas/terms](http://www.adobe.com/products/eulas/terms). By using the Adobe Acrobat Services, You agree that it has read, understood and shall comply with the Adobe Acrobat Terms of Use. You must pay the Adobe Acrobat annual plan fee either (i) up-front; or (ii) by monthly instalments, to which the interest rate published in clause 1(a) shall apply. You must give ECT no less than 30 days’ notice in writing before the expiry of the plan, if You do not wish to renew the Adobe Acrobat Service. Where such notice is not received by ECT by the due date, the Adobe Acrobat Service shall be automatically renewed for another term and You shall be liable for that new term.
- (d) Conflict.** In the event of a conflict between the additional terms incorporated by reference (pursuant to clauses 11(a) – (c)) (“Additional Terms”) and the terms of the Agreement, then the Additional Terms shall prevail only to the extent of the conflict.

## 12 Miscellaneous.

Captions/headings are for convenience only and not to be used in construing this Agreement. 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 the State of Victoria 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 the State of Victoria, Australia to resolve any disputes arising hereunder.

## 13 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. Without limiting any other rights in this Agreement, ECT may amend at any time the provisions of this Agreement by, at ECT’s election by posting revised Terms of Use for GlobalMeet Services (“Amended Terms”) on the ECT Website at <http://www.ect.com.au/terms.html> and either (i) delivering the Amended Terms to You at the address, fax or e-mail address provided herein (such delivery may be included in invoices for the Services delivered to You); or (ii) by other reasonable means as permitted by applicable laws (such as including a notice on invoices to You advising the Terms of Use have been amended). All Amended Terms shall automatically be effective the earlier of: (i) the date indicated on the ECT Website or (ii) Your next billing cycle following posting or delivery to You. You agree to be solely responsible for regularly reviewing the ECT Website to obtain timely notice of any such amended terms and ECT’s then-current terms of use. In the event You (acting reasonably) do not agree to such amended terms, they may terminate the Agreement without the payment of any termination fees by notifying ECT in writing prior to the effective date of such amended terms. By using the services after the effective date of such Amended Terms, You 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. Except as otherwise provided in this Agreement or any Schedule hereto, this Agreement may only be amended or modified, in whole or in part, by a written instrument signed by the parties to this Agreement.