

## **ADDITIONAL TERMS OF SERVICE FOR USE OF CISCO WEBEX**

**These Terms and Conditions were last revised 31 January 2013 and are subject to periodic revisions and updates.**

**IMPORTANT- READ CAREFULLY: CUSTOMER'S USE OF THE CISCO WEBEX SERVICES IS CONDITIONED UPON CUSTOMER'S COMPLIANCE WITH, AND AGREEMENT TO BE BOUND BY, THESE ADDITIONAL TERMS OF USE FOR CISCO WEBEX SERVICES ("CISCO WEBEX TERMS").**

**IF CUSTOMER DOES NOT AGREE WITH THESE CISCO WEBEX TERMS, DO NOT USE THE CISCO WEBEX SERVICE. CUSTOMER IS ENCOURAGED TO PRINT OR DOWNLOAD THESE TERMS AND CONDITIONS AND TO REGULARLY CHECK THIS WEBSITE TO OBTAIN TIMELY NOTICE OF ANY CHANGES TO THESE CISCO WEBEX TERMS, WHICH MAY OCCUR FROM TIME TO TIME AND AT ANY TIME WITHOUT NOTICE.**

By using the Cisco WebEx Services (as below defined, including any trial use), Customer agrees to the following Cisco WebEx Terms. Terms which are capitalised which are not defined in these Cisco WebEx Terms but are defined the Standard Terms and Conditions, shall have the same meaning as in the Standard Terms and Conditions located on this website.

### **1. SERVICE**

- (i) These Cisco Webex Terms are in addition to ECT's standard terms and conditions which are available at <http://www.ect.com.au/files/Terms and Conditions -ECT.pdf> or such other terms and conditions agreed between ECT and the Customer.
- (ii) Except where otherwise specified by ECT, the Cisco WebEx Service shall be supplied to Customer on a Named Host, Concurrent Seat, Committed Minutes basis or Meeting Centre Active Host.

### **2. AGREEMENT TERM / RENEWAL**

- (i) Cisco WebEx Service shall commence from the Start Date and shall run for the period specified in the Agreement ("**Initial Term**"). Thereafter, the Cisco WebEx Service shall automatically renew consecutive renewal periods (each a "**Renewal Term**") and Customer shall be liable for the full term charge.
- (ii) Customer may terminate the Cisco WebEx Service by giving ECT no less than 60 days' notice in writing prior to the end of the Initial Term or applicable Renewal Term. The termination shall only take effect at the end of Initial Term or applicable Renewal Term.

### **3. BILLING TERMS**

- (i) Recurring monthly charges for Cisco WebEx Services (including Microsites) shall be billed in equal monthly instalments in advance.
- (ii) Customer is liable for the full term charge for the Cisco WebEx Services (including Microsites) regardless of Agreement expiration or termination date.

### **4. NAMED HOST LICENSES**

- (i) Each meeting must be hosted by a Named Host and the number of meeting participants should not exceed the maximum number of participants for the Customer's subscription level as specified in the Agreement.
- (ii) The Maximum Meeting Participants is the maximum number of participants permitted under the subscription for each meeting hosted, irrespective of the number of Named Hosts attending the meeting.
- (iii) Where the number of participants for a meeting created and/or hosted by a Named Host exceeds the applicable subscription level, the Customer shall be liable to pay Overage at the rate specified in the Agreement or, where a rate is not specified in the Agreement, the default Overage rate.
- (iv) Named Host accounts are individualised and may not be shared or used by anyone other than the one employee to whom the Named User account is assigned. Separate Named Host

licenses must be purchased for each user. The identification of Named Hosts must be unique to an individual and may not be of a generic nature.

- (v) The Customer shall identify those users assigned to Named Host accounts on the "Manage Hosts" list ("List"). Customer is responsible for ensuring that the List is at all times complete and up to date.
- (vi) Only one user/employee may be assigned to a Named Host license.
- (vii) Named Host licenses shall not be shared between multiple users and separate Named Host licenses must be purchased for each user.
- (viii) A Named Host account may not be transferred to another user except upon either:
  - (A) termination of the user's employment or other relationship with Customer, or
  - (B) ECT's prior written approval.
- (ix) Where a user/employee ceases to be associated with the Customer, Customer shall immediately deactivate the Named Host account to prevent unauthorised use.
- (x) Customer is at all times responsible for monitoring and maintaining the use of the Named Host licenses and for ensuring that the Cisco WebEx Service is used in accordance with these Additional Terms as well as the terms and conditions of the Agreement. Customer shall indemnify ECT for any loss incurred or damage suffered as a result the use and/or misuse of a Named Host license.
- (xi) Recording of meeting sessions is included with the service with storage capacity up to 1 gigabyte. Additional charges shall apply for additional storage above 1 gigabyte, which shall be invoiced monthly in arrears.
- (xii) Additional custom development will incur additional charges and will be quoted separately.

#### **5. CONCURRENT SEAT**

- (i) One seat equals one attendee (whether host, participant or presenter).
- (ii) Each Concurrent Seat has unlimited monthly use for a standard fee. At any given time, if the total number of attendees exceeds the total number of concurrent seats stated in the agreement, Overage will be charged in 15 minute increments based on the number of excess attendees multiplied by the total time spent in the meeting.
- (iii) Set-up fees includes own branded site, hosting, support and training.
- (iv) Recording of meeting sessions is included with the service with storage capacity up to 1 gigabyte. Additional charges shall apply for additional storage above 1 gigabyte, which shall be invoiced monthly in arrears.
- (v) Additional custom development will incur additional charges and will be quoted separately.

#### **6. COMMITTED MINUTES**

- (i) Set-up fees include own branded site, hosting, support and training.
- (ii) Recording of meeting sessions is included with the service with storage capacity up to 1 gigabyte. Additional charges shall apply for additional storage above 1 gigabyte, which shall be invoiced monthly in arrears.
- (iii) Additional custom development will incur additional charges and will be quoted separately.
- (iv) Where the Cisco WebEx Services is supplied on a Committed Minutes basis, , Customer is liable to pay for the greater of:
  - (A) the Committed Minutes; or
  - (B) in the event the Customer exceeds the Committed Minutes, total number of minutes recorded by ECT.
- (v) regardless of Agreement expiration or termination date.
- (vi) Committed Minutes shall be calculated on a monthly basis or such other period as specified in the Agreement.
- (vii) Any unused portion of the Committed Minutes for any given month shall be forfeited with no credit or refund to Customer.
- (viii) In the event that Customer's usage exceeds the Committed Minutes, Customer shall be charged for the Overage at the same rate as the Committed Minutes.
- (ix) The number Committed Minutes may be increased at any time during the term of the Agreement by mutual agreement of the Customer and ECT.
- (x) Fees payable by the Customer for Overage amounts shall be invoiced monthly, in arrears, on the basis of minutes of use.

#### **7. INTELLECTUAL PROPERTY RIGHTS**

- (i) ECT and/or its suppliers will own all rights, title and interest, including all related Intellectual Property, to any suggestions, ideas, feedback, improvements, recommendations or other information created, conceived, or reduced to practice, by or on behalf of Customer, any viewer or any subscriber to a Cisco WebEx Services.
- (ii) Notwithstanding the preceding paragraph, nothing in these Cisco WebEx Terms creates or transfers any right or interest in any Intellectual Property Rights held by the Customer, ECT or its suppliers.

#### **8. WARRANTY DISCLAIMERS; LIABILITY LIMITATIONS**

Notwithstanding any other provision herein or in any other agreement between the Parties:

- (i) the Cisco WebEx Services are provided on an "as is" and "as available" basis and any and all representations, warranties or covenants, either express or implied, including but not limited to, implied warranties of merchantability or fitness for a particular purpose are hereby expressly disclaimed to the maximum extent permitted by law;

- (ii) no service levels shall apply to the provision of Cisco WebEx Services except where otherwise agreed in writing by ECT;
- (iii) neither ECT, nor its suppliers, shall be liable for any indirect, incidental, special, consequential or punitive damages or damages arising from lost data, interrupted communications, lost revenue, lost profits, lost technology, loss of rights or costs of procuring substitute services or any other substitution or solution, however arising, even if ECT and/or its suppliers are made has been advised of the possibility of such damages;
- (iv) in no case shall the aggregate of ECT and all of its supplier's total liability arising out of or relating to or in any way connected with the provision or non-provision of Cisco WebEx Services, whether in contract, tort or otherwise, exceed the amount of fees actually paid to ECT by Customer for the one (1) month prior to the claim first being raised by the Customer; and
- (v) ECT shall only and solely be responsible to indemnify the Customer relating to the Cisco WebEx Services to the same extent and subject to the same terms as ECT is indemnified by its suppliers for Cisco WebEx Services.

## **9. MEETING CENTRE ACTIVE HOST DESCRIPTION AND TERMS**

### **9.1 Employees**

Prior to the commencement of the supply of the Cisco WebEx Service, and no less than 30 days prior to the anniversary of the Start Date of the Cisco WebEx Service, Customer shall provide to ECT a written statement:

- (i) stating the total number of Employees; and
- (ii) which is signed by an authorised officer of the Customer.

### **9.2 Active Host Average.**

Prior to conclusion of the then-current initial or renewal term, ECT will calculate the number of Active Hosts averaged over the immediately preceding three (3) month period (for example, months 9, 10 and 11) to determine the "Active Host Average."

### **9.3 Calculation of Subscription Quantity for the Initial Term**

- (i) **New Subscriber:** Where Customer is not a current ECT customer, the "Subscription Quantity" is greater of:
  - (A) 15% of the total number of Employees,
  - (B) 100 Active Host accounts.
- (ii) **Existing Subscriber:** Where Customer is an existing ECT customer, the "Subscription Quantity" is the greater of:
  - (A) 15% of the total number of Employees,
  - (B) 100 Active Host accounts; or
  - (C) the Active Host Average calculated from all existing subscription(s) as specified in **paragraph 9.2.**

### **9.4 Calculation of the Subscription Quantity for all Renewal Terms.**

Prior to conclusion of the then-current Term, ECT will calculate the Subscription Quantity as set forth above. Customer understands and agrees that any change in the Subscription Quantity will occur immediately upon calculation and without prior notice. ECT will advise Customer of the changes (if any) upon invoicing in the subsequent billing period.

### **9.5 Calculation of Usage Charges**

- (i) The Monthly Charges payable by the Customer each month shall be calculated in accordance with the following formula:  

$$\text{Monthly Charge} = \text{Subscription Quantity} \times \text{Monthly Fee per Active Host.}$$
- (ii) The Monthly Charge is re-set at the beginning of each Renewal Term, and after an Extraordinary Event.

### **9.6 Extraordinary Event**

- (i) If there is an extraordinary event during the Initial or any Renewal Term, such as a merger, acquisition, divestiture or significant layoff that changes the number of Employees by more than twenty percent (20%) (an "Extraordinary Event"), Customer shall report such change to ECT within thirty (30) days of such event and the Subscription Quantity will be reset based on the number of Employees employed by the Customer after the Extraordinary Event.
- (ii) The Monthly Charge shall be calculated in accordance with the formula set out in **paragraph 9.5.**

## **10. AUDIT**

- (i) ECT shall have the right, upon given the Customer reasonable notice in writing, to audit the Customer's records (including but not limited to the List) during normal business hours to ensure Customer's compliance with the above requirements.
- (ii) ECT will pay the reasonable cost of the audit unless it is found that the Subscriber is misusing the Cisco WebEx Service including where the Customer:
  - (A) exceeded the number of allowable Meeting participants,
  - (B) shared a Named Host account among multiple Employees,
  - (C) having a host hold multiple meetings at the same time in excess of the maximum number participants;
  - (D) providing a Named Host account to a non-Employee, or
  - (E) misrepresented the total number of Employees.

## 11. DEFINITIONS

In addition to the terms and conditions set out in the Agreement, in these Additional Terms, these words shall have the following meanings:

- (i) **"Active Host"** is a Named Host who hosts one (1) or more meetings per month using Cisco WebEx Services.
- (ii) **"Committed Minutes"** means the minimum number of minutes that a Customer agrees to use for the period specified in the Agreement;
- (iii) **"Concurrent Seat"** means a license to invite and have a single individual join a meeting;
- (iv) **"Employees"** are full and part-time employees of Subscriber, including all of Subscriber's subsidiaries and affiliates (but not including employees of Subscriber's parent company, if any).
- (v) **"Maximum Meeting Participants"** means the largest number of individuals that may attend a Cisco WebEx meeting (includes host, participant or presenter).
- (vi) **"Microsite"** means a customer dedicated website where they may manage Cisco WebEx Services and host meetings;
- (vii) **"Named Host"** means a user account which is allocated to a particular named user and may not be shared with other users;
- (viii) **"Overage"** means any usage above and beyond the agreed upon levels;
- (ix) **"Subscription Quantity"** has the meaning given in paragraph 9.3.