

## Green Light Environmental “eBase” Terms of Use

The terms and conditions detailed below are binding on any use of the Service and apply to You from the time that eBase provides You with access to the Service.

eBase reserves the right to change these terms at any time, effective upon the posting of modified terms and eBase will make every effort to communicate these changes to You via email or notification via the Website. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website.

By signing Your Proposal/Quotation for the Service you acknowledge that You have read and understood these Terms of Use and have the authority to act on behalf of any person for whom You are using the Service. By continued use of the Service, You are deemed to have agreed to these Terms of Use on behalf of any entity for whom you use the Service.

These Terms were last updated on 1<sup>st</sup> February 2017.

5.2.3 Where an application or service has been provided by eBase free of charge, eBase supplies the product or service without warranty and reserves the right to change or withdraw the offering at its sole discretion.

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Agreement:

“Agent” means eBase’s affiliates, contractors, third-party suppliers or any other entity that provides goods or services to eBase.

“Agreement” means the eBase Terms of Use (these terms and conditions), Proposal/Quotation document and any other document incorporated by reference.

“Authorised User” means persons You have authorised to be Users.

“Back Up” means daily copies of the Data which may be used to restore the lost Data in the event of an error in which Data is destroyed by failures in storage, transmission, processing or other like cause.

“Business Day” means Monday to Friday, excluding National and State Public Holidays, Christmas Day and Boxing Day.

“Business Hours” means 9am to 5pm, Perth time, on any Business Day.

“Claim” means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or received by or against the person.

“Commencement Date” means the date the Proposal/Quotation (Annexure ‘A’) is signed by the customer (You).

“Confidential Information” means all information contained within the Service or provided to You by eBase or its Personnel, including but not limited to designs, concepts, product designs (whether registered or not), trade marks, copyright and rights in the nature of copyright, patents, patterns, drawings, models, computer generated designs or images, any rights under licence, know-how, techniques, technical information and technical drawings, any information marked “confidential” or which eBase informs You is confidential or a trade secret, details of and information about eBase’s intellectual property and any other commercial information about eBase or persons with whom eBase deals.

“Data” means any data or information input, saved or uploaded into an application by You or with Your authority.

“Defective” in relation to the Service, means that it:

- a) does not conform to the Specifications; and/or
- b) has a substantially significant error, defect or malfunction which does not conform with the Specifications; and/or
- c) otherwise does not comply with the essential requirements of this Agreement.



"Event of Insolvency" means:

- a) a "controller" (as defined in section 9 of the Corporations Act 2001 (Cth)), a trustee, administrator or similar officer is appointed in respect of a person or any asset of a person;
- b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- c) an application (not withdrawn or dismissed within 7 days) is made to a Court of competent jurisdiction for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - i) appointing a receiver, manager, administrator, liquidator or provisional liquidator;
  - ii) winding up or deregistering a corporation; or
  - iii) proposing or implementing a scheme of arrangement other than with the prior approval of the Customer under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act 2001 (Cth);
- d) any event or conduct occurs which would enable a Court of competent jurisdiction to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision;
- e) any application (not withdrawn or dismissed within 7 days) is made to a Court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - i) a moratorium of any debts of a person;
  - ii) a personal insolvency agreement;
  - iii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - iv) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
- f) any agreement or other arrangement of the type referred to in paragraph (e) is ordered, declared or agreed to;
- g) a person becomes insolvent under administration within the meaning of the Corporations Act 2001 (Cth);
- h) as a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth), a corporation is taken to have failed to comply with a statutory demand (as defined in the Corporations Act 2001 (Cth));
- i) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
- j) the Commissioner of Taxation issues a notice to any creditor of a person under the Taxation Administration Act 1953 (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice;
- k) anything analogous to anything referred to in paragraphs (a) to (j) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law of any jurisdiction; or
- l) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

"GST" means the goods and services tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).

"Insolvency Provision" means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

"Intellectual Property Rights" includes all present and future rights in relation to copyright, trade marks, designs, patents or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise.

"Log-In" means the identification and password provided to You by eBase as specified in the Specifications or any other identification that eBase provides to You in its absolute discretion. eBase reserves the right to ask You to reset or alter its Log-in at its absolute discretion.

"Moral Rights" means the moral rights granted under the Copyright Act 1968 (Cth), and any similar rights existing under foreign laws.

"Personnel" of a person means that person's directors, officers, employees, agents, contractors, sub-contractors and their respective personnel.

"Proposal" means the Training Management Proposal/Quotation annexed as Annexure "A" to this Agreement.

"Renewed Term" has the same meaning as set out in clause 2.1.4 of this Agreement.

"Service" means the web-based managed service specified in the Specifications, along with any software, printed media, printed materials and online documentation or Support Services provided by eBase in accordance with the Specifications.

"SPAM" has the same meaning given to the term under the Spam Act 2003 (Cth).



"Specifications" means the specifications outlined in this Agreement in conjunction with the Proposal/Quotation (Annexure 'A') and eBase Implementation Guide.

"Support Services" means the services set out in clause 5 of this Agreement.

"Term" means the term specified on the Proposal/Quotation (Annexure 'A').

"User" means any person who uses the Service.

"Subscriptions" means the number of user access seats You have purchased to use the Service as specified in the Specifications.

"eBase" means Green Light Environmental Pty Ltd or eBase and/or its Agents.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

1.2.1 The "Description" section and headings are for convenience only and do not affect the construction or interpretation of this Agreement;

1.2.2 Words in the singular also include the plural and vice versa;

1.2.3 Words importing a gender include other genders;

1.2.4 A reference to a "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

1.2.5 If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

1.2.6 "includes" in any form is not a word of limitation; and

1.2.7 A reference to "\$" or "dollar" is to Australian currency and an obligation to pay money is an obligation to pay in Australian dollars.

## 2. Specifications

### 2.1 Access to the Service

2.1.1 eBase will supply and You will acquire the Service on the terms of this Agreement.

2.1.2 Any time frame stipulated in the Specifications for the provision of the Service is an estimate only and may be amended by eBase from time to time.

2.1.3 You acknowledge and agree that You have read and understood the Specifications and are satisfied with and have accepted the Specifications. You further acknowledge and agree that You cannot make a Claim or withhold payment with respect to any issue arising from or in connection with the functionality or provision of the Service if eBase has provided the Service substantially in accordance with the Specifications.

2.1.4 You acknowledge and agree that this Agreement will be self-renewing on the anniversary of the Commencement Date for a twelve (12) month period ("Renewed Term"). This is an essential term of the Agreement.

### 2.2 Training

2.2.1 eBase will provide reasonable training to enable You and/or Your Personnel to properly operate the Service.

2.2.2 eBase will provide the training at the locations and at the times as agreed between the parties.

2.2.3 eBase will provide the training for the fee quoted to You in the Specifications or as agreed from time to time.

### 2.3 Invitations

2.3.1 You acknowledge that any Users You invite to use the Service will be required to establish their own eBase network account. You further acknowledge and agree that by inviting that User, they will be able to access the Data.

2.3.2 eBase warrants that You will be able to terminate a User's access to the Data at any time.

2.3.3 You acknowledge that a User will retain access to other independent services provided by eBase subsequent to any termination of access of that User to the Data. If a User's access to the Data is terminated, that User will no longer have access to the Data.



### 3. Data Storage

#### 3.1 Options of Storage

3.1.1 You acknowledge and agree that your Data may be located and stored on foreign servers, at eBase's sole discretion from time to time.

3.1.4 eBase will take all reasonable endeavours to Back Up the Data. Should you obtain a copy of the Data, You agree it is Your sole responsibility to take all reasonable endeavours to Back Up that Data with redundancy methods in place to Your satisfaction.

### 4. Service Availability

4.1 eBase will provide You with Log-In information required to connect to and access the Service, including a sufficient number of Log-Ins to provide Users with access, to the maximum of the number of Subscriptions.

4.2 eBase shall use reasonable endeavours to ensure the connectivity and efficiency of the Service. In the event that You are unable to access the Service during the term of this Agreement due to any fault arising from eBase, eBase may, at its absolute discretion, issue You with an amount of credit equal to the time that You could not access the Service.

4.3 You acknowledge and accept that eBase may temporarily amend, repair or vary particular programs, information and facilities from time to time at its absolute discretion if required for the maintenance or repair of the Service, even if it will result in a variation, amendment or limitation of the functionality of the Service, a reduction in Service or a reduction in the availability of Data provided by the Service. If this occurs, eBase shall use its reasonable endeavours to restore full functionality of the Service within 14 days.

4.4 eBase shall use its reasonable endeavours to provide continuing availability of the Service for the duration of this Agreement, but You expressly acknowledge and accept that eBase may, at its absolute discretion and without notice, immediately suspend all or part of the Service:

- a) Where there is a malfunction or breakdown of any of eBase's equipment or if eBase is required to undertake the repair, maintenance or service of any part of the Service;
- b) During planned downtime for maintenance; eBase operates a Scheduled Daily Maintenance window between 4AM and 5AM AWST during which eBase may be put into maintenance mode for a maximum of 20 minutes without further notice. A eBase service may become unavailable during the window if a particular system changes, such as storage, security, network or system upgrades are being applied which require an outage, and only for the minimum amount of time required to make the necessary changes.
- c) Where there is any interruption resulting directly or indirectly from an electrical storm, tempest, electrical short circuit, power failure, telecommunications failure or fault, acts of God, civil or military authority, acts of public enemy, wars, accidents, fires, explosions, earthquakes, floods, strikes, labour disputes, Government action, shortage of suitable parts or any other cause beyond the reasonable control of eBase;
- d) Where it is reasonably required to reduce or prevent fraud or interference with the Service;
- e) Where eBase is required to do so to comply with an order, instruction or request of government, or a court or tribunal, or other such competent body;
- f) Where eBase reasonably believes that the terms of this Agreement have been violated by You, Your Personnel or Users.
- g) Where You fail to pay any charges due to eBase; or
- h) To withdraw or vary the Service.

#### 4.5 Third Party Applications

4.5.1 For third party applications hosted by eBase, eBase may carry out upgrades on applications from time to time including:

- i) Infrastructure/Hosting upgrades
- ii) Additional application features developed by eBase
- iii) Correct bugs
- iv) New features or versions of the software issued by the Vendor.

4.5.2 eBase will perform a maximum of one (1) upgrade selected and installed at eBase's sole discretion per year on each third party application. These will include updating to software of the latest version that has been fully tested and all identified bugs corrected.

eBase may at its sole discretion choose to apply further third-party application upgrades.

4.5.3 Additional third-party application services charges include (but are not limited to):

- i) Requests for specific upgrades or at a specific time
- ii) Themes and third party plug-ins
- iii) Theme or third party plug in breaks between versions

4.5.4 eBase will provide reasonable notice for when upgrades will occur. Applications will be unavailable during upgrade maintenance periods. eBase will make reasonable endeavours to minimise down-time, however upgrades may require up to three (3) days to complete. On completion, eBase will request



You to test the application to ensure all data has migrated correctly. There may be instances where manual updates to data will be required by You.

## **5. Support and maintenance**

### **5.1 Inclusions**

5.1.1 You agree that the Service is licensed to You for Your use to the extent of the Subscriptions purchased by You as set out in the Specifications.

5.1.2 eBase agrees to use all its reasonable endeavours to continuously provide You with support and maintenance services in substantial conformity with the descriptions contained in the Specifications in accordance with the following:

a) Incremental Updates: These include, but are not limited to, updates arising from changes in government policy, legislation, refined interfaces and updated manuals.

b) Technical Support:

i) eBase agrees to provide technical support for the Service at all times during Business Hours on Business Days in accordance with the fees set out in the Specifications.

ii) You will be charged at eBase's applicable consulting rate for any technical support services provided by eBase to You or in accordance with the fees set out in the Specifications.

iii) If the issue requiring technical support is determined to be one which arises from or in connection with a product or service not supplied by eBase, You acknowledge and accept that You will be charged in accordance with eBase's consulting rate as set out in the Specifications for time and expenses expended in addressing that issue.

### **5.2 Exclusions**

5.2.1 You acknowledge and accept that eBase will not provide technical support services in respect of:

a) Third party products and/or services: This includes, but is not limited to email, word processors, operating systems, integrated applications (applications which may integrate with other eBase products or services but are not supplied or hosted by eBase), internet products or validation products;

b) Acts by third parties: This includes, but is not limited to, the following:

i) Rectification of defects or errors resulting from any modification of the Service by any person other than eBase Personnel;

ii) Rectification of defects or errors resulting from use of the Service in combination with equipment other than the designated computer equipment;

iii) Rectification of operating errors;

iv) Rectification of a fault of computer equipment;

v) Any modification of the Service which represents a departure from the descriptions contained in the Specifications; and

c) Data Import/Export: Technical support for importing or exporting Data to and from products and services other than eBase's products and services.

5.2.2 Where integration services are supplied by eBase to any third party application, eBase will provide technical support services for the integration component only and not the third party application itself.

5.2.3 Where an application or service has been provided by eBase free of charge, eBase supplies the product or service without warranty and reserves the right to change or withdraw the offering at its sole discretion.

### **5.3 Access to Support**

You acknowledge and accept that:

a) In order to have access to the Support Services, You must have telephone, email and internet access;

b) The Support Services are only available to Users who have been trained in how to use the eBase product or service by eBase Personnel;

c) eBase reserves the right at its absolute discretion to limit or terminate Support Services to customers who use the Service in an irregular, excessive, abusive or fraudulent manner.

## **6. Payment terms**

### **6.1 Fees, Invoices and payment**

6.1.1 Unless expressly stated otherwise in writing:

a) The fees payable on the Service are set out in the Specifications;

b) Payment terms are set out in the invoice issued to You by eBase;



c) The number of Subscriptions purchased cannot be decreased during the Term;

d) Subscription fees are based on yearly periods that begin on the Commencement Date and each yearly anniversary thereof. Any Subscriptions added during the Term will be charged on a pro-rata basis for the period remaining in the Term.

6.1.2 You acknowledge and agree that eBase may vary the fees payable on the Service from time to time by providing one (1) month notice of such variation.

6.1.3 If eBase has omitted any charges in an invoice or if there are any errors in calculation that appear on a eBase invoice, eBase reserves the right to include those charges on a later invoice.

6.1.4 You acknowledge and accept that prior to providing the Service, eBase relied on Your disclosure to eBase in respect of all of Your requirements. eBase reserves the right to charge You for any further services required by You as a result of non disclosure or incorrect disclosure to eBase of Your requirements.

6.1.5 You are liable for all third party costs arising from or in connection with the provision of the Service and associated products and services, including but not limited to, shipping, packaging and travel costs.

6.1.6 If You dispute any amount charged by eBase, You must notify eBase in writing of that disputed amount within 30 days of the invoice date and must settle the undisputed portion of that invoice. If You do not notify eBase of any disputed amount within 30 days of the invoice, You are deemed to have accepted the invoice as accurate and are liable to pay it in full pursuant to the applicable payment terms.

## 6.2 Consequences of non-payment

6.2.1 If You fail to make payment for any product or service provided to You by eBase by the due date as specified by eBase on the invoice issued to You in accordance with clause 6.1, eBase reserves the right to:

a) Charge You interest on any outstanding amounts at the rate of 15% per annum, calculated monthly;

b) Charge You all costs and expenses incurred in recovering any outstanding amounts owed to eBase;

c) Engage the services of a debt collection organisation, legal practitioners or other entities to assist eBase in recovering that debt and add the debt recovery costs to the amount of any outstanding debt, including, but not limited to, costs incurred prior to any legal action, collection agency costs, Court costs, legal costs and search costs;

d) Suspend the Service provided to You until such amounts are paid in full and charge a reinstatement fee of 20% of the amount owing to eBase to reactivate the Service following payment by You; and/or

e) Terminate the Agreement with You.

6.2.2 eBase will not be responsible for any loss or damage caused by the termination of Your Service under clause 6.2.

## 7. eBase Responsibilities

### 7.1 eBase's Obligations

7.1.1 From the Commencement Date, eBase will:

a) provide the Service in accordance with this Agreement;

b) install and configure the Service pursuant to the Specifications;

c) provide training in accordance with clause 2.2 above; and

d) provide Support Services for the Service pursuant to the Specifications.

7.1.2 In addition to the obligations under clause 7.1.1 above, eBase shall:

a) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, in accordance with clause 4.4 of the Agreement;

b) provide the Service only in accordance with applicable laws and government regulations;  
and

c) use all reasonable endeavours to ensure that its Personnel provide a secure environment for the provision of the Service and the protection of the Data.

## 8. Customer Responsibilities

### 8.1 Customer Obligations regarding proper use of the Service



You agree that in using the Service, You must:

8.1.1 Comply with all reasonable directions with respect to the use of the Service, which are issued by eBase from time to time at its absolute discretion.

8.1.2 Comply with all statutory obligations that are imposed upon You in respect of the collection and use of the Data.

8.1.3 Not use the Service to engage in or permit disruptive activities, including but not limited to, circulating any unsolicited publicity or advertising material, propagation of computer worms and viruses, gain unauthorised access to any other computer system, sending harassing, obscene, offensive or threatening electronic mail, forging electronic mail and placing, transmitting or storing any defamatory or pornographic material on the internet.

8.1.4 Not use the Service to knowingly engage in, permit or be involved personally in:

- a) Using unsolicited commercial email as a means of advertising on the internet; or
- b) Being the source address involved in the transmission of SPAM, chain letters or mail bombs.

8.1.5 Not knowingly access or permit any other party to access the Service for or in connection with any purpose or activity that is illegal or fraudulent in nature, including but not limited to, using the Service to aid the commission of a crime or infringe upon the rights of a third party.

## 8.2 Customer's Rights and Obligations

8.2.1 Subject to this Agreement, You will:

- a) pay eBase the fees as and when they fall due pursuant to the payment terms specified by eBase in the Specifications;
- b) be solely responsible for the accuracy, quality, integrity and legality of the Data and of the means by which You acquired the Data;
- c) be solely responsible to have the Data presented to eBase in a format which is compatible with the Service for the purpose of data import (where applicable);
- d) use commercially reasonable efforts to prevent unauthorised access to or use of the Service, and notify eBase promptly of any such unauthorised access or use;
- e) use the Service only in accordance with eBase's directions and applicable laws and government regulations; and
- f) ensure that all Log-In information required to access the Service, whether in use or not, is kept secure and confidential and to immediately notify eBase of any unauthorised use of that information or any other breach of security.

8.2.2 Subject to this Agreement, You shall not:

- a) knowingly or negligently make the Service available to anyone other than persons You have authorised to access the Service;
- b) sell, resell, rent or lease the Service;
- c) impose any further restrictions on the exercise of the rights granted or affirmed to the User, including but not limited to, imposing a licence fee, royalty, or other charge for exercise of rights granted to the User, initiating litigation alleging that any Intellectual Property Rights are infringed by making, using, selling, offering for sale, or importing the Service or any portion of it;
- d) use the Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- e) use the Service to store or transmit malicious code;
- f) interfere with or disrupt the integrity or performance of the Service or third party Data contained therein; or
- g) attempt to gain unauthorised access to related systems or networks of the Service.

## 8.3 Customer's Obligations regarding Users

Subject to this Agreement, You will:

- a) impose the necessary restrictions and obligations on the Users to ensure Users uphold the terms of this Agreement;
- b) undertake all reasonable endeavours to ensure that the Users do not breach any of the terms of the Agreement;
- c) undertake that all restrictions and obligations imposed on the Users will survive termination or expiration of this Agreement; and
- d) indemnify eBase against any breach of the terms of this Agreement that occurs as a result of a User's use of the Service.



## 9. Proprietary rights / Intellectual Property

### 9.1 Ownership of eBase Data

9.1.1 eBase is the sole proprietor of and retains all Intellectual Property Rights (including but not limited to copyright) embodied in or connected to the Service provided to You and any Users pursuant to this Agreement (including but not limited to any images, photographs, animations, video, audio, music, text, objects, “applets” incorporated into the Service, and any related documents or software, whether in their original form or otherwise).

9.1.2 Except as expressly permitted by applicable law or pursuant to this Agreement, You must not broadcast, publish or republish, upload to a third party, transmit, post, show or play in public, distribute or otherwise reproduce in any format, adapt or change, alter, reverse engineer, modify, translate, decompile, disassemble or create derivative works of the intellectual property of eBase, including the Service, without eBase’s prior written consent.

9.1.3 Nothing in this Agreement affects the ownership of Moral Rights in the Service.

9.1.4 You acknowledge and agree that this clause survives following the termination of this Agreement.

### 9.2 Ownership of Customer Data

You acknowledge and agree that:

9.2.1 You have obtained all relevant Intellectual Property Rights, clearances and/or other consents and authorisations over any information such as, but not limited to images, written text, video, software or other content (“Content”) which You post, display, transmit, provide or otherwise make available to eBase; and

9.2.2 The Content is Your sole responsibility and eBase has no ownership, control or responsibility to You or to any third party for any Content which may infringe any Intellectual Property Rights of a third party.

### 9.3 Restrictions

9.3.1 eBase’s intellectual property is used by You and Users with eBase’s consent pursuant to this Agreement. Upon termination of this Agreement, unless You have eBase’s written consent, You must immediately cease using eBase’s Intellectual Property.

9.3.2 You agree not do any act or thing in relation to Data which would cause eBase to infringe any party’s copyright or Intellectual Property Rights. You indemnify eBase against any Claim made or brought against it by a third party alleging that the Data, or Your use of the Service infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law, and You agree to indemnify eBase for any damages awarded in connection with any such Claim, provided that eBase promptly gives You written notice of the Claim and gives You sole control of the defence of the Claim and provides to You all reasonable assistance.

9.3.3 eBase indemnifies You from any Claims brought against You by third parties alleging use of the Service as permitted hereunder infringes the Intellectual Property Rights of a third party provided that You promptly give eBase written notice of the Claim and give eBase sole control of the defence and settlement of the Claim and You provide eBase all reasonable assistance.

### 9.4 Suggestions

You acknowledge and accept that eBase shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual licence to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by You or Users of the Service, relating to the operation of the Service.

## 10. Confidentiality

### 10.1 Protection of Confidential Information

10.1.1 Neither party may, without the prior written consent of the other, disclose the other party's Confidential Information unless it is compelled to do so by law.

10.1.2 Each party will take all reasonable steps to ensure that its Personnel do not make public or disclose the other party's Confidential Information.





10.1.3 Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

10.1.4 You acknowledge and agree that this clause survives following the termination of this Agreement.

## **11. Privacy**

### 11.1 Protection of Privacy

#### 11.1.1 eBase:

i) Will not use or disclose any personal information for a purpose other than discharging its obligations under this Agreement;  
ii) Agrees to comply at all times with the National Privacy Principles contained in Schedule 3 to the Privacy Act 1988 (Cth) (or an applicable privacy code approved by the Federal Privacy Commissioner pursuant to that Act) in the same way and to the same extent as the Customer would have been required to comply had it been directly responsible for performing the act or practice concerned; and  
iii) Will take all necessary steps to protect personal information in its possession against misuse or loss and it will return all such information to the Customer (or if requested by You, destroy or de-identify such information) upon termination or expiry of this Agreement. This clause will survive the termination or expiry of this Agreement.

11.1.2 For the purpose of this clause, "personal information" means information or an opinion about an individual as defined in section 6 of the Privacy Act 1988 (Cth) (as amended from time to time) which is collected, used, disclosed, stored or handled by the supplier for the purposes of this Agreement.

## **12. Termination, breach, default**

### 12.1 Termination by You

12.1.1 If You are purporting to terminate this Agreement as a result of a breach of the Agreement by eBase, You agree that Your exclusive remedy is described at 15.1.

12.1.2 You may terminate this Agreement at any time by giving eBase at least sixty (60) days written notice. You acknowledge that on termination of this Agreement, You forfeit any Claim to any refund for any amounts for which You have been charged, regardless of whether such amounts have been paid.

12.1.3 You further acknowledge and agree that You are liable to pay any charges associated with the remaining Term or Renewed Term.

12.1.4 If You terminate the Agreement without complying with Your obligations under clause 12, eBase may suspend or terminate Your access to the Service immediately.

### 12.2 Termination by eBase

12.2.1 eBase may terminate this Agreement at any time by giving You at least thirty (30) days written notice. If eBase terminates this Agreement in this way and You are not in breach of this Agreement, any charges paid by You will be refunded on a pro-rata basis of the amount paid by You for the time in which You will not be provided with the Service.

12.2.2 Notwithstanding 12.2.1, eBase shall use its best endeavours to provide continuing availability to the Service for the duration of this Agreement, but You expressly acknowledge and accept that eBase may, at its absolute discretion, immediately discontinue the Service with no notice to You if eBase's ability to provide the Service is restricted or altered in such a way that eBase considers, in its absolute discretion, that it is not commercially viable, impractical or impossible, to continue to provide the Service.

12.2.3 eBase may terminate this Agreement immediately if:

- a) You do not pay outstanding charges by the due date as specified in the invoice to You issued by eBase;
- b) You are in breach of any of the express or implied terms of this Agreement and, where the breach is capable of being remedied, You have failed to remedy the breach within 7 days after notice by eBase;
- c) In eBase's view, it appears that You have undergone or are likely to undergo an Event of Insolvency;



d) If eBase reasonably suspects fraud or misuse of the Service by You; or

e) Any Claim is made that infringes the rights of a third party or exposes eBase to liability to any third party, or prosecution for an offence or to a statutory penalty.

### 12.3 Automatic Termination

You acknowledge and accept that this Agreement will terminate automatically, without the requirement for eBase to take any action whatsoever, if either party undergoes an Event of Insolvency.

### 12.4 Consequences of Termination

a) Upon termination or expiry of this Agreement, You must immediately cease access to the Service.

b) Once all outstanding charges plus any applicable interest and expenses are paid in full, eBase will supply You with the Data in electronic format in a specification designed by eBase.

c) Termination or expiry of this Agreement will not affect the operation of any accrued rights or liabilities of either party, nor any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.

## 13. Warranties & Disclaimers

### 13.1 eBase's Warranties

13.1.1 eBase warrants that the Service shall perform substantially in accordance with the Specifications.

13.1.2 For any breach of the warranty at clause 13.1.1 above, Your exclusive remedy is that described at 15.1.

### 13.2 Disclaimer

Except as expressly provided in this Agreement, neither party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by law.

## 14. Limitation of Liability and Indemnity

### 14.1 Limitation of Liability

You acknowledge and accept that:

14.1.1 Subject to the Competition and Consumer Act 2010 (Cth) or other applicable legislation, eBase's total liability for any loss, damage or reliance shall be limited to:

a) In the case of goods, either replacement of goods, repair of goods, or a refund of the price paid for the goods (as determined by eBase); or

b) In the case of services, either supply of the services again or a refund of the price paid for the services (as determined by eBase).

14.1.2 eBase is not liable or in default, delay or failure in performance under this Agreement for any interruption resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, accidents, fires, explosions, earthquakes, floods, strikes, labour disputes, Government action, shortage of suitable parts or other cause beyond the reasonable control of eBase.

14.1.3 All warranties, conditions and representations, whether express or implied (other than express warranties stated by eBase in writing), are excluded except where eBase is by law unable to exclude or limit liability. To the fullest extent permitted by law, eBase is not liable to You for loss of profit or other economic loss, indirect, special, consequential, general or similar damages arising under any order, or for negligence by eBase, or for any claim made against You by any other party even if eBase has been advised of the possibility of such claim.

14.1.4 You expressly acknowledge and agree that delays in the provision of technical support may occur for various reasons, including but not limited to, volume and operational reasons. You agree to hold eBase harmless against any such delays.



14.1.5 You expressly acknowledge and agree that eBase, its Personnel, affiliates, contributors, third party content providers, Agents and licensors are not liable to You for any direct, indirect, incidental, special consequential or exemplary damages incurred by You through Your use of the Service including but not limited to loss of Data and breach of Data security.

#### 14.2 Indemnity

You will indemnify eBase in respect of any Claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment suffered or incurred by eBase (including, but not limited to, economic loss and all legal costs and disbursements on a full indemnity basis) caused by You and/or any wilful, illegal or negligent act or omission by You.

#### 14.3 Non essential service

14.3.1 The parties acknowledge and agree that performance of eBase's obligations under this Agreement does not constitute an essential service for the purposes of the law relating to Insolvency Provision.

14.3.2 Notwithstanding clause 14.3.1 above, if eBase is held to be providing an essential service in a relevant sense and eBase is required by any person or Court of competent jurisdiction to continue to abide by its obligations under this Agreement despite a breach of this Agreement by You, then You acknowledge that the You will be charged at eBase's ordinary rates immediately upon notification by eBase to You to that effect.

### **15. Dispute Resolution & Remedies**

#### 15.1 Dispute Resolution Process

If a dispute arises out of or relates to this Agreement, except where urgent interlocutory relief is sought, neither party may commence legal proceedings unless:

15.1.1 The party claiming a dispute has given written notice of the dispute to the other; and

15.1.2 Both parties endeavour, in good faith, to resolve the dispute expeditiously by any means upon which they mutually agree.

#### 15.2 If Dispute Unresolved

If the dispute remains unresolved within 30 days after notice has been given under 15.1, the parties agree that a mediator will be appointed by the President of the Law Institute of Western Australia or his/her nominee and the parties will bear the costs associated with the mediation equally. If the dispute is not resolved via mediation, either party may institute legal proceedings concerning the subject matter of the dispute.

#### 15.3 Legal Representation

During any mediation or other legal proceedings, both parties may be represented by a duly qualified legal practitioner.

### **16. General**

#### 16.1 Execution

16.1.1 Both parties warrant to one another that as at the date of signing this Agreement (or any other document including Proposals/Quotations), the signatories have the full power and authority to execute this Agreement on behalf of the respective party.

16.1.2 If a party consists of more than one person:

- i) An obligation of those parties is a joint obligation of all of them and a several obligation of each of them;
- ii) A right given to those parties is a right given jointly and severally to each of them and if exercised by one of them, is deemed to be exercised jointly; and
- iii) A representation, warranty or undertaking made by those parties is made by each of them.



## 16.2 Guarantee

You acknowledge and agree that if You are a company, If requested You must deliver to eBase:

- a) a Guarantee completed in full and executed by all of the directors of the Customer company in the form of the Guarantee and Indemnity attached as Schedule 1 to this Agreement and to the satisfaction of eBase or its agent; and
- b) a company search of the Customer company that is not more than 14 days old.

## 16.3 Counterparts

16.3.1 The parties may execute this Agreement in two or more counterparts.

16.3.2 The parties deem that each counterpart is an original.

16.3.3 All counterparts together constitute one instrument.

16.3.4 A faxed copy will be treated as a counterpart.

## 16.4 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

16.4.1 must be in writing and adequately addressed (or as otherwise notified by a party to the other party from time to time);

16.4.2 must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

16.4.3 must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, or scanned and e-mailed, of the addressee;

16.4.4 is taken to be received by the addressee:

- a) in the case of prepaid post sent to an address in the same country, on the third day after the date of posting;
- b) in the case of prepaid post sent to an address in another country, on the fifth day after the date of posting by airmail;
- c) in the case of facsimile transmission, at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- d) in the case of e-mail, at the time in the place to which it was received equivalent to the time shown on the received e-mail item produced by the e-mail application from which was received; and
- e) in the case of delivery by hand, on delivery; and
- f) if taken to be received under clause 16.3.4 on a day that is not a Business Day during Business Hours, it is taken to be received on the next Business Day.

## 16.5 Waiver

16.5.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

16.5.2 The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.

16.5.3 The variation or waiver of a clause or clauses in this Agreement or a party's consent to a departure from a clause by another party will be ineffective unless in writing and executed by all relevant parties.

16.5.4 A waiver of a breach or default of any clause in this Agreement shall not be construed as a waiver of any succeeding breach of the same or any other clause, nor shall delay or omission to exercise or avail oneself of any right from the power or privilege available under in this Agreement operate as a waiver to any breach or default of this Agreement.



#### 16.6 Relationship of Parties

Nothing in this Agreement is to be interpreted as constituting either party an agent, partner or employee of the other and neither party may pledge the credit of the other, nor represent that it is the other party or an agent, partner or employee of the other party, or it has any power or authority to incur any obligation of any nature on behalf of the other party.

#### 16.7 Assignment

16.7.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

16.7.2 eBase may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

#### 16.8 No exclusivity

The parties acknowledge that this is a non-exclusive arrangement. Therefore, eBase is permitted to provide the same or similar Service or related products or services to any other person.

#### 16.9 Whole agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to subject matter. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

#### 16.10 Variation

eBase reserves the right to unilaterally vary this Agreement from time to time in its absolute discretion by providing reasonable written notice to You of the variation. You acknowledge and agree that publication of any changes made by eBase to this Agreement on eBase's website will constitute reasonable notice to You of those changes.

#### 16.11 Further Assurance

Each party will promptly do all such things and execute any documents required by law or reasonably required by the other party to give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the rights of the other party to this Agreement.

#### 16.12 Force Majeure

If a party is prevented from or delayed in performing an obligation by Force Majeure, and promptly acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period the Force Majeure continues and any further period that is reasonable in the circumstances. In this clause "Force Majeure" means an event beyond the reasonable control of the affected party, which occurs without the fault or negligence of the affected party.

#### 16.13 Severability

If any clause or part thereof in this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be read down to the extent required so its validity and enforceability and the validity and enforceability of the remaining provisions are not affected.

#### 16.14 Governing Law and Jurisdiction

This Agreement is governed by and construed in accordance with the law of Western Australia and the parties hereby voluntarily submit to the exclusive jurisdiction of the Courts of Western Australia.