

Partner Specific Terms and Conditions

Part A Supply of Hardware and Encoo Software

1 Application of this Part

This Part A of the Specific Terms will only apply where the Contract Details Schedule specifies that Encoo is to supply Encoo Software or Hardware to the Partner.

2 Supply of Hardware

- 2.1 Encoo will supply the Hardware to the Partner at the Prices listed in the Contract Details Schedule.
- 2.2 Encoo will, at the Partner's cost, use its best endeavours to deliver the Hardware and any associated Encoo Documentation to the Partner Site by the delivery date specified in the Contract Details Schedule. Delivery times listed in the Contract Details Schedule are estimates only and Encoo will not be liable for any loss, damage or delay suffered or incurred by the Partner arising from late or partial delivery of any Hardware. Late or partial delivery of Hardware will not entitle the Partner to reject delivery of the Hardware.
- 2.3 Encoo will issue an invoice to the Partner for the Price at the time that it delivers, or has delivered, the Hardware to the Partner.
- 2.4 Risk of loss and damage to the Hardware and the Encoo Documentation will pass to the Partner upon delivery. Title to the Hardware will only pass to the Partner upon full payment of the Price.
- 2.5 To the full extent permitted by law, Encoo expressly excludes all warranties, conditions and representations, whether express or implied, in relation to the Hardware (including as to performance, quality or fitness for use or purpose, non-infringement of Intellectual Property Rights or that the Hardware will be free from defects).
- 2.6 Certain legislation may imply warranties or conditions or impose obligations upon Encoo which cannot be excluded, restricted or modified except to a limited extent. These Specific Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which Encoo is able to do so, its liability will be limited, at its option, to:
 - (1) replacement of the Hardware or supply of equivalent goods;
 - (2) repair of the Hardware;
 - (3) payment of the cost of replacing the Hardware or acquiring equivalent goods; or
 - (4) payment of the cost of having the Hardware repaired.

3 Supply of Encoo Software

- 3.1 Encoo grants the Partner a non-exclusive, non-transferable licence to use the Encoo Software and the Encoo Documentation for the Term.
- 3.2 Encoo will:
 - (1) if the Encoo Software is to be hosted by Encoo, make the Encoo Software available through the Hosting Service; or
 - (2) otherwise deliver the Encoo Software to the Partner by:
 - (a) electronic transmission to the Partner's computer systems;
 - (b) making available the Encoo Software for download on its website; or
 - (c) delivering physical media containing the Encoo Software to the Partner.
- 3.3 Unless the Encoo Software is to be hosted as part of the Hosting Services, the Partner will be responsible for installing the Encoo Software on its computer systems.
- 3.4 Unless agreed otherwise in a Statement of Work, Encoo will have no obligations to develop, integrate, install or test any Encoo Software for the Partner.
- 3.5 Unless the Partner acquires Support and Maintenance Services from Encoo, Encoo will have no obligation to support the Encoo Software (including correction of any defects or errors) or to provide updates or patches for, or to otherwise maintain, the Encoo Software.
- 3.6 The Encoo Software is provided to the Partner 'as is'. To the full extent permitted by law, Encoo expressly excludes all warranties, conditions and representations, whether express or implied, in relation to the Encoo Software (including as to performance, quality or fitness for use or purpose, non-infringement of Intellectual Property Rights or that the Encoo Software will be free from defects, faults or errors).

- 3.7 Certain legislation may imply warranties or conditions or impose obligations upon Encoo which cannot be excluded, restricted or modified except to a limited extent. These Specific Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which Encoo is able to do so, its liability will be limited, at its option, to:
- (1) replacement of the Encoo Software or supply of equivalent software;
 - (2) rectification of any defects of the Encoo Software;
 - (3) payment of the cost of replacing the Encoo Software or acquiring equivalent software; or
 - (4) payment of the cost of having any defects in the Encoo Software rectified.

Part B Telecommunications Services

4 Application of this Part

This Part B of the Specific Terms will only apply where the Contract Details Schedule specifies that Encoo is to provide Telecommunications Services to the Partner.

5 Additional definitions

In this Part B:

- (1) **DID Number** means the direct inward dialling telephone number(s) allocated to the Partner by Encoo for use in connection with the Partner's VOIP Connection;
- (2) **Internet Connection** means a telecommunications connection to the Internet, as provided to the Partner by Encoo;
- (3) **Rates** means Encoo's fees and rates for providing the Telecommunications Services as set out within a quotation;
- (4) **ROU Code** means Communications Alliance Ltd's Code on the Rights of Use of Numbers (C566:2004);
- (5) **Telecommunications Laws** means:
 - (a) the *Telecommunications Act 1997* (Cth);
 - (b) the *Telecommunications Number Plan 1997* (Cth);
 - (c) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth); and
 - (d) the ROU Code; and
- (6) **VOIP Connection** means a voice-over-internet-protocol connection that allows the Partner to make and receive telephone calls over Encoo's computer networks and system and which is capable of connecting to a public switched telephone network.

6 Service requirements

- 6.1 Encoo's provision of the VOIP Connection and the Partner's ability to use the VOIP Connection is conditional upon the Partner having an internet connection of at least 64kpbs upload and 64kpbs download per voice channel and either:
- (1) a voice over internet protocol (VOIP) telephone handset connected to an Internet connection; or
 - (2) a soft phone capability on the Partner's computer.
- 6.2 Unless Encoo also provides an Internet or Private MPLS Connection to the Partner under this Agreement, Encoo is not responsible for, and to the maximum extent permitted by law excludes all liability for, the Partner's inability to access or use its VOIP Connection due to a failure in, or degradation of performance of, the Partner's Internet connectivity.
- 6.3 The Partner acknowledges and agrees that any person who the Partner allows to make telephone calls using the VOIP Connection is deemed to be authorised by the Partner to make those calls and the Partner will be responsible for all charges incurred by such persons.

7 Voice Over Internet Protocol

7.1 If specified in the Contract Details Schedule, Encoo will:

- (1) provide the VOIP Connection to the Partner; and
- (2) allocate DID Numbers to the Partner.

7.2 If requested by the Partner, Encoo will use its reasonable endeavours to 'port' any DID Numbers in accordance with the requirements of the ROU Code.

7.3 Unless Encoo has expressly agreed in the Contract Details Schedule to provide such, the Partner will be solely responsible for providing the telecommunications connections, modem, computer, hardware, software and all other equipment required to access and use the VOIP Connection.

8 Internet connectivity

8.1 If specified in the Contract Details Schedule, Encoo will:

- (1) provide the Partner with the Internet Connection by such means as Encoo determines;
- (2) use its best endeavours to provide the Internet Connection on a continuous basis during the Term of this Agreement. Encoo will endeavour to inform the Partner if the Internet Connection is unavailable for access and use by the Partner due to maintenance or fault; and
- (3) provide the Partner with all identification and log-in information required to access and use the Internet Connection.

8.2 Unless Encoo has expressly agreed in the Contract Details Schedule to provide such, the Partner will be solely responsible for providing the telephone line (or other telecommunications connection), modem, computer, hardware, software and all other equipment required to access and use the Internet Connection.

8.3 Encoo may, at its discretion, retain and assess any data or information concerning the Partner's use of the Internet Connection.

8.4 The Partner acknowledges that Encoo does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the Internet Connection and that Encoo will not be held responsible for, and to the maximum extent permitted by law excludes all liability for, any content or information accessed via the Internet Connection.

8.5 Encoo excludes all or any liability for any material on the Internet that the Partner or its Personnel finds offensive, upsetting, defamatory, personally offensive or in any way unsuitable for persons under the age of 18.

9 Duration

9.1 Encoo will:

- (1) provide the Telecommunications Services to the Partner in accordance with the Agreement for the Initial Term, unless the Telecommunications Services are terminated in accordance with this Agreement; and
- (2) if neither party cancels the Telecommunications Services before the end of the Initial Term, continue to supply the Telecommunications Services to the Partner on a month-to-month basis in accordance with this Agreement until those Telecommunications Services are cancelled or terminated in accordance with this Agreement.

9.2 After the expiry of the Initial Term, either party may cancel any of the Telecommunications Services by giving 30 days prior written notice to the other.

10 Rates

10.1 At any time during the Term of this Agreement, Encoo may vary the Rates by giving at least 21 days prior notice to the Partner.

10.2 If the Partner receives a notice under clause 10.1 of these Specific Terms (**Rates Change Notice**), then Partner may by notice in writing to Encoo terminate this Agreement in relation to any Telecommunications Services affected by the Rates Change Notice within 42 days of the date of the Rates Change Notice without incurring any additional charges (including Early Termination Charges, if applicable) other than normal usage or network access charges up until the effective date of termination of the Telecommunications Services affected by the Rates Change Notice.

11 Use

11.1 Unless Encoo expressly provides the Telecommunications Services to the Partner for re-sale, the Partner must not distribute, re-sell, wholesale, offer to distribute, re-sell or wholesale or otherwise provide access to the Telecommunications Services (or part of the network or system involved in the provision of the Telecommunications Services) to any third parties who are not the Personnel of the Partner.

11.2 When using the Telecommunications Services, the Partner must comply with:

- (1) all applicable laws, including the Telecommunications Laws;
- (2) all applicable directions by the Australian Communications and Media Authority; and
- (3) all reasonable written directions or policies issued by Encoo to the Partner relating to the use of the Telecommunications Services.

11.3 The Partner must not use, or attempt to use, the Telecommunications Services:

- (1) to break any law or to infringe another person's rights, including any Intellectual Property Rights;

- (2) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised
- (3) in any way that may expose Encoo to liability; or
- (4) in any way which or which may damage, interfere with or interrupt the Telecommunications Services, Encoo's network or a supplier's network used to supply the Telecommunications Service.

11.4 The Partner must ensure that all equipment used in connection with the Telecommunications Service and the way the Partner uses that equipment complies with:

- (1) all applicable laws, including the Telecommunications Laws;
- (2) all applicable directions by the Australian Communications and Media Authority; and
- (3) all reasonable written directions issued by Encoo to the Partner.

12 Privacy

12.1 The Partner acknowledges that Encoo, or any supplier whose network is used to supply the Telecommunications Service, may be required to intercept communications over the Telecommunications Service and may also monitor the Partner's usage of the Telecommunications Service and communications sent over it.

12.2 Encoo may be permitted or required by applicable laws to collect, use or disclose personal information about the Partner, including to:

- (1) the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
- (2) emergency services organisations; and
- (3) law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

13 Complaints and disputes

13.1 If the Partner has any complaints in connection with any Telecommunications Service the Partner may complain in writing or by calling Encoo.

13.2 Encoo will use its best endeavours to resolve all complaints, however if Encoo is not able to resolve a complaint to the Partner's satisfaction, the Partner may take other action, such as informing the Telecommunications Industry Ombudsman or the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.

14 Telecommunications Service Levels

14.1 Encoo will provide the Telecommunications Services to the Partner in accordance with Service Levels (if any) specified in Section 5 (Service Levels) of the Standard Terms and Conditions.

14.2 If no Service Levels are specified for a particular Telecommunications Service, then Encoo is only obliged to perform that Service in accordance with the General Terms.

Part C Hosting Services

15 Application of this Part

This Part C of the Specific Terms will only apply where the Contract Details Schedule specifies that Encoo is to provide Hosting Services to the Partner.

16 Provision of Hosting Services

16.1 Encoo will:

- (1) at its own cost, arrange for the installation of the Encoo Software and any agreed Partner Software on Encoo's systems, which are located at its data centre, located in Melbourne, Victoria, Australia (**Designated Equipment**);
- (2) bear sole responsibility for the operation and maintenance of the Designated Equipment and any software, hardware or utilities necessary for the operation of the Designated Equipment and the provision of the Hosting Services; and
- (3) use its best endeavours to ensure that sufficient capacity is at all times maintained on the Designated Equipment and its other computer facilities to enable the Partner's Personnel to use and access the Encoo Software and any agreed Partner Software in accordance with the Service Levels set out in clause 18 of these Specific Terms.

- 16.2 The Partner must provide (or acquire from Encoo) any and all equipment (including telecommunications connections, equipment, computer hardware and software and any ancillary services) necessary to receive the benefit of the Hosting Services.
- 16.3 Subject to clause 16.5 of these Specific Terms, Encoo does not warrant that the Partner or its personnel will have continuous access to the Encoo Software and any agreed Partner Software. Encoo will not be liable in the event that the Encoo Software or any agreed Partner Software is unavailable to the Partner or its personnel due to computer downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities. However, Encoo will use its best endeavours to promptly notify the Partner when the Encoo Software or any agreed Partner Software is unavailable as soon as Encoo becomes aware of such an occurrence.
- 16.4 Subject to clause 16.5 of these Specific Terms, the Hosting Services do not include maintenance or support of the Encoo Software and any agreed Partner Software. Without limiting the foregoing, Encoo accepts no responsibility for any loss, deficiency or inaccuracy in the Encoo Software and any agreed Partner Software attributable to a lack of maintenance or support.
- 16.5 Where the Partner acquires Support and Maintenance Services, Encoo will support and maintain the Encoo Software in accordance with Part D of these Specific Terms but will have no obligation to support or maintain any Partner Software.

17 No acceptance testing

- 17.1 If the Partner wishes for any of the Services, Encoo Software, Additional Products or Additional Services to be subject to acceptance testing, then a Statement of Work for the acceptance testing regime must be agreed under clause 6 of the General Terms.
- 17.2 If clause 17.1 of these Specific Terms does not apply, then no item of Services, Encoo Software, Additional Products or Additional Services are to be subject to acceptance testing and Encoo will have no obligation to conduct any acceptance tests. The Partner will be deemed to have accepted such items 'as is' and to have irrevocably waived any rights to conduct acceptance testing at any future time.

18 Hosting Service Levels

- 18.1 Encoo will provide the Hosting Services to the Partner in accordance with the Service Levels (if any) specified in clause 2 of Schedule 2.
- 18.2 If no Service Levels are specified for a particular Hosting Service, then Encoo is only obliged to perform that Hosting Service in accordance with the General Terms.