

These terms and conditions are between Emesent Pty Ltd (ABN 626 502 350) (**we, us or our**) and you, being the individual or entity seeking to make a referral to us (**you or your**), together the **Parties** and each a **Party**.

You agree that by making a referral to us, you accept the terms. You agree that the terms of this Agreement are binding by you from the date you make your first Referral until the date that these terms are terminated in accordance with the 'termination' clause below (**Term**).

1 Referrals

- 1.1 During the Term of this Agreement, you may refer Referrals to us through the online form located on our Site.
- 1.2 We may reject any Referral:
 - (a) that is an Existing Client;
 - (b) that has a contractual relationship or has/is in negotiations with us in relation to the Services; or
 - (c) at our absolute discretion.
- 1.3 Nothing in this Agreement creates an exclusive relationship between you and us, and we may, at any time, enter into arrangements with any other individual or entity, including in relation to receiving referrals of potential new business or clients, or any other business activities including in relation to goods and services the same or similar to the Goods and Services.
- 1.4 Nothing obliges us to involve you in its arrangements or dealings with referred customers. We will work directly with customers independently from the Referrer.
- 1.5 If you become aware of any actual or potential conflict of interest between this Agreement and any other work you are undertaking, you agree to inform us in writing and take reasonable steps to resolve the conflict.

2 Referral Fee

- 2.1 If a Referral is accepted by us, we agree to pay you the Referral Fee of 5% and;
- 2.2 The referral fee will be calculated from the net value of the original invoice (Inclusive of GST) and;
- 2.3 We will pay the Referral Fee for any accepted Referrals when the following criteria has been met:
 - (a) The customer has accepted a quote and entered into an agreement with us in relation to their goods and services
 - (b) The customer has paid their invoice for their goods and services
- 2.4 We agree to provide you with a sales report, setting out the Referral Fee payable by us to you (including, if applicable, all Fees received by us from each Referral), for the immediately preceding period (Sales Report). We will send the sales report
 - (a) the end of each month during the Term if there has been a referral that has met the criteria in clause 2.2Following receipt of our Sales Report, you agree to promptly issue us with a valid tax invoice requesting payment of the Referral Fee as set out in the Sales Report. We will pay the Referral Fee within [30] days from the date the invoice was received by us from you.
- 2.5 To the extent there is a dispute between the Parties as to the Referral Fee due and payable to the Referrer, the relevant dispute will be referred to dispute resolution under clause 10.4.
- 2.6 If a third party makes a claim for a referral fee (or part thereof) in respect of a Referral, then we may apportion the Referral Fee under this Agreement among the claimants at our sole discretion. We will make reasonable efforts to consult with all relevant parties regarding any apportionment, but any decision we make regarding the apportionment is final.
- 2.7 You agree that we may set-off or deduct from any monies payable to you under this Agreement, any amounts which are payable by you to us (whether under this Agreement or otherwise).

3 Confidentiality and Privacy

- 3.1 Subject to clause 3.2, a Receiving Party agrees to (and agrees to ensure that its Personnel do):
 - (a) keep confidential; and

(b) not use or permit any unauthorised use of,
all Confidential Information of a Disclosing Party.

3.2 Clause 3.1 does not apply where:

- (a) the information is in, or comes into, the public domain (other than by a breach of this clause 3 or any other duty of confidence owed by the Receiving Party);
- (b) the Receiving Party has the prior written consent of the Disclosing Party;
- (c) the disclosure is required by law;
- (d) the disclosure is required in order for the Receiving Party to comply with its obligations under this Agreement; or
- (e) the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the Receiving Party ensures the adviser complies with the terms of this clause 3.1.

3.3 You acknowledge and agree that monetary damages may not be an adequate remedy for a breach of clause 3.1. We are entitled to seek an injunction, or any other remedy available at law or in equity, at our discretion, to protect ourselves from a breach (or continuing breach) of this clause 3.1.

3.4 You agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) (as if you were an "APP entity" as defined in the *Privacy Act 1988* (Cth)) and any other applicable legislation or privacy guidelines that may apply to you.

3.5 This clause 3 will survive the termination or expiry of this Agreement.

4 Intellectual Property

4.1 As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials, and

nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials [or Your Materials].

4.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials or Improvements will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials and/or Improvements do not automatically vest in us, you agree to do all things necessary or desirable to assure our title to such rights.

4.3 We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use Our Materials that we provide to you, and the New Materials and Improvements, solely for the purposes for which they were developed and solely for your performance of your obligations under this Agreement, as contemplated by this Agreement

4.4 You grant us a non-exclusive, irrevocable, worldwide, non-sublicensable and non-transferable right and licence to use your Materials, for the purposes reasonably contemplated by this Agreement and for us to derive the benefits of your performance of your obligations under this Agreement.

4.5 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and you agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.

4.6 In the use of any Intellectual Property Rights in connection with this Agreement, you agree not to (and you agree to ensure that your Personnel do not) commit any Intellectual Property Breach.

4.7 This clause 4 will survive termination or expiry of this Agreement.

5 Warranties and representations

You represent, warrant and agree that:

- (a) you have not relied upon any warranty, representation, statement or documentation made or provided by or on behalf of us, except as expressly provided in this Agreement;
- (b) you have full legal capacity, right, authority and power to enter into this Agreement, to perform your obligations under this Agreement, and to carry on your business;

- (c) this Agreement constitutes legal, valid and binding obligations, enforceable in accordance with its terms;
- (d) the execution and performance by you of this Agreement and each transaction contemplated by it does not conflict with any law, order, judgment, rule or regulation applicable to you or any instrument binding on you;
- (e) you are not aware of any conflict of interest between this Agreement and any other work you have been offered or are undertaking and you agree not to engage in other work if it conflicts with your obligations under this Agreement;
- (f) you will conduct business in a manner that reflects favourably on us and our Services;
- (g) you will make no false or misleading representations with respect to us and our Services;
- (h) you will have no right to enter into any contracts, instruments or commitments in the name of, or on behalf of, us or to bind us in any respect whatsoever;
- (i) you will comply with any relevant laws, including any laws requiring you to disclose any Referral Fee that you may obtain from us, to the Referral or any potential Referral;
- (j) except as required by law or as expressly set out in this Agreement, you will not give or make any undertakings, guarantees or warranties to any person (including any potential Referrals) with respect to us and our Goods and Services without our prior written consent;
- (k) in marketing the Goods and Services and seeking Referrals, you will act with due care and skill and not engage in any unfair, deceptive or unethical business practice and adhere to our brand guidelines;
- (l) not to post or publish any pricing for the Emesent Goods and Services on your website or any other public forum (including the Recommended Retail Prices). This won't prevent you from listing the fees for the services offered by you which incorporate the Emesent Goods and Services;
- (m) you will not do anything that may adversely affect our goodwill, brand or reputation (or that of the Services);
- (n) you will comply with any reasonable directions given to you by us from time to time;
- (o) if applicable, you have a valid ABN (or equivalent) which has been advised to us; and
- (p) if applicable, you are registered for GST purposes.

This clause 5 will survive the termination or expiry of this Agreement.

6 Restraint

- 6.1 You (whether inadvertently, directly or indirectly), agree not to, during the Restraint Period and in the Restraint Area:
- (a) provide the Goods and Services to our clients, other than as permitted under this Agreement;
 - (b) induce or solicit our Personnel (who were Personnel at the date of termination or expiry of this Agreement or within the 12 months prior), to leave their employment, agency or contractual arrangement with us; or
 - (c) compete with us or enter into business arrangements with, advise, work for, consult with, provide the Goods and Services to, or in any way assist, any of our clients or competitors.
- 6.2 You agree that, in consideration of this Agreement:
- (a) the terms of this clause 6 are reasonable given the nature of our business, are necessary to protect our legitimate business interests and do not unreasonably restrict your right to carry on your profession or trade;
 - (b) we may seek legal remedies (including equitable remedies) for a breach of this clause 6; and
 - (c) on request, you agree to provide us with evidence sufficient to enable us to confirm your compliance with this clause 6.
- 6.3 For the purposes of this clause 6, Restraint Period means the Term, and:
- (a) [18] months after the Term of this Agreement, or (if that duration is deemed unreasonable);
 - (b) [12] months after the Term of this Agreement, or (if that duration is deemed unreasonable);
 - (c) [9] months after the Term of this Agreement.
- 6.4 For the purposes of this clause 6, Restraint Area means:

- (a) the countries in which you we provide the Services, or (if that area is deemed unreasonable);
- (b) the states and/or territories in which we provide the Services, or (if that area is deemed unreasonable);
- (c) the metropolitan cities in which we provide the Services.

6.5 This clause 6 will survive termination or expiry of this Agreement.

7 Liability

7.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) we make no guarantees or warranties in respect of the Services; and
- (b) you make no warranty or assurance in relation to the quality of a Referral.

7.2 Despite anything to the contrary, to the maximum extent permitted by law, you are liable for, and agree to indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:

- (a) any breach by you (or any of your Personnel) of this Agreement; and
- (b) any third party claim against us, as a result of your performance under this Agreement,

but this indemnity will be reduced proportionately to the extent the Liability was caused or contributed to by the acts or omissions of us (or any of our Personnel).

7.3 This clause 7 will survive the termination or expiry of this Agreement.

8. Taxes

8.1 If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

8.2 If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.

8.3 If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

8.4 The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

9. Termination

9.1 This Agreement will apply for the Term, unless terminated earlier in accordance with this clause 9.

9.2 Either Party may terminate this Agreement at any time by giving 30 days' notice in writing to the other Party. You may, in any event, stop referring new Referrals to us at any time.

9.3 This Agreement will terminate immediately upon written notice by:

- (a) us, if you (or any of your Personnel) breach any provision of this Agreement, and that breach has not been remedied within 10 Business Days of being notified by us; or
- (b) you, if we are in breach of a material term of this Agreement, and that breach has not been remedied within 10 Business Days of being notified by you.

9.4 Upon expiry or termination of this Agreement, you agree to (and you agree to ensure that your Personnel):

- (a) stop promoting the Services;
- (b) stop representing that you are authorised to promote, market or otherwise advertise the Services;
- (c) immediately return to us all property, including Confidential Information and Intellectual Property, belonging to us or our Personnel, in your (or your Personnel's) possession;
- (d) not use any Intellectual Property or Confidential Information belonging to us or our Personnel; and

(e) pay any amount owed under this Agreement to us as a debt due and immediately payable.

9.5 Termination of this Agreement will not affect any rights or liabilities which a Party has accrued under it.

9.6 This clause 9 will survive the termination or expiry of this Agreement.

10. General

10.1 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.

10.2 **Assignment:** A Party agrees not to assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party.

10.3 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.

10.4 **Disputes:** If any dispute or claim (including any question regarding its existence, validity or termination) arises out of or in connection with this Agreement (**Dispute**), either Party may issue a notice to the other Party outlining the dispute or claim (**Notice of Dispute**). Within 14 days of a Notice of Dispute, senior representatives of the Parties must meet in good faith to resolve the Dispute by negotiation or such other means as they mutually agree. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may:

(a) where the Parties are both located in Australia, refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties; and

(b) where either Party is located outside of Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration (**ACICA**), with such arbitration to be conducted in Brisbane, Queensland, in English and in accordance with the ACICA Arbitration Rules. The costs of the arbitration will be shared equally between the Parties and the determination of the arbitrator will be final and binding.

Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

This clause will survive expiry and/or termination of this Agreement.

10.5 **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

10.6 **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and their obligations under it.

10.7 **Governing law:** This Agreement is governed by the laws of Queensland. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

10.8 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email (or, where the time of transmission is not on a Business Day, 9am on the next Business Day).

10.9 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

10.10 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

11. Interpretation

In this Agreement, unless the context otherwise requires:

(a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;

(b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;

- (c) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (e) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (g) a reference to time is to local time in Queensland; and
- (h) a reference to \$ or dollars refers to the currency of Australia from time to time.

12. **Definitions**

- (i) Refer to the [Definitions PDF](#)