

## END-CUSTOMER LICENCE AGREEMENT (“ECLA”)

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In this agreement, ReadiNow and You, being the End-Customer, may individually be referred to as “Party” and collectively referred to as “Parties”.

This End Customer Licence Agreement (“**ECLA**”) as updated in the Documentation is a legal agreement between You and ReadiNow Corporation Pty Ltd, ABN 83 149 568 712 (“**ReadiNow**”) and it governs Your use of the ReadiNow Products made available to You by ReadiNow through Your nominated ReadiNow Authorised Partner in accordance with the Documentation. You enter into this ECLA on the basis of the terms and conditions set out in the ECLA version published at <https://www.readinow.com/partner-terms> as of the date you start using the Software and the Products, or click on the “Agree” or “Accept” or similar button. Order Forms will be governed by the relevant ECLA as per <https://www.readinow.com/partner-terms> at the date of signing the relevant new or varied Order Forms with the Authorised Partner.

By using the Software and the Products, or by clicking on the “Agree” or “Accept” or similar button or continued use of the Software, or authorising any other person to do so, with access to the Tenant, You agree to these terms and conditions. The individual who binds the End-Customer to this ECLA, including by clicking on the “Agree” or “Accept” or similar button, or continuing accessing or using the Products and the Tenant, represents that he or she is authorised to bind the End-Customer and agrees on behalf of the End-Customer that the terms of this ECLA shall govern the relationship of the Parties with regard to the subject matter in this ECLA.

### Scope

This ECLA governs Your initial purchase of ReadiNow Products as well as any future purchases made by You through the Authorised Partner referred to in this ECLA. This ECLA applies where You purchase ReadiNow Products through a ReadiNow Authorised Partner. Authorised Partners may not make any promises or commitments on ReadiNow’s behalf, and ReadiNow is not bound by any obligations to You other than what ReadiNow specifies in this ECLA and in any executed ReadiNow Order Form.

## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 Definitions

**Authorised Partner** means a Technology Partner or a Reseller Partner of ReadiNow that is authorised to resell Products or PDAs to End- Customers under the terms of this End-Customer Licence Agreement (ECLA).

**Business Day** or **Business Hours** means a day, between the local hours of 9am to 5pm AEST/ADST, that is not a Saturday or Sunday or a public holiday, in New South Wales, Australia.

**Capacities** means the defined limits or restrictions on the use or access to, elements of the Products including but not limited to file and data storage, number of records, number of workflows processes, usage limits, bandwidths limits, service request time, or other such variables as defined by ReadiNow or outlined in Documentation for the Tenant or Non-Production Tenant.

**Claim** means any claim, action, demand, proceeding or investigation of any kind and includes the allegation of a claim.

**Competitor** means a person or entity that supplies software and/or services which are the same or equivalent to the Products supplied by ReadiNow.

**Confidential Information** in relation to a Party, means information in any form or media given by or acquired from the Party, directly or indirectly, whether before, on, or after the date of this ECLA, that:

- (i) is by its nature confidential;
- (ii) is marked or designated or confirmed by a Party as confidential, commercial in confidence or proprietary at the time of its disclosure; or
- (iii) the other Party knows or ought to know is confidential, relating to a Party, this ECLA or the goods and services provided under this ECLA and includes information:

- (a) concerning a Party's, or any related bodies corporate's past, present or future:
  - (i) structure, business activities, strategies, plans and assets, including Intellectual Property Rights of or used by a Party;
  - (ii) products and their specifications, including pricing, technical information, network, communications, technology);
  - (iii) designs, codes, patents, plans, drawings, modules, formulae, trade secrets, know-how, processes and techniques;
  - (iv) financial affairs; or
  - (v) clients, customers, suppliers, distributors and their financial affairs and agreements with them;
- (b) concerning any of the terms of this ECLA; or obtained during the negotiation of this ECLA, including evaluation procedures,

but excludes information that:

- (c) is developed by a Party on its own without reference to the other Party's Confidential Information;
- (d) was known to a Party before the start of this ECLA without any confidentiality obligation; or
- (e) becomes publicly known other than as a result of a breach of this ECLA.

**Consequential Loss** means any indirect, special, incidental, reliance or consequential damages of any kind (including lost profits, opportunity, business, revenue, anticipated savings, contracts, third party costs, special or exemplary or punitive damages, penalties, goodwill or reputation), however caused, whether in contract, tort or under any other theory of liability, not arising naturally and according to the usual course of things from the relevant breach, whether or not such loss may reasonably be supposed to have been in contemplation of both Parties at the time they made the contract.

**Content** means all data, software and information, including, without limitation, data text, software, scripts, video, sound, graphics and images (excluding Third Party Content) that are created, uploaded or transferred in connection with the use of the Products by You.

**Customer Data** means all electronic data or information submitted by, uploaded or supplied by You for use with the Products excluding Third Party Content, including Personal Information, Content and Confidential Information.

**Designated Representatives** means the Personnel nominated by You who has completed administration training by ReadiNow and who are responsible for:

- (a) overseeing Your ticket activity;
- (b) developing and deploying troubleshooting processes within Your organisation; and
- (c) resolving password reset, username, lockout issues and other similar first line support for Your Personnel.

**Documentation** means terms of use, specifications, Capacities, any training guidelines, user guidelines, operating guidelines, technical guidelines, reports or other documentation specified, and other guidelines supplied or made available online with the Products and made available through the ReadiNow online portal and subsequent releases and upgrades, and such documentation as updated from time to time.

**End-Customer** means any person or entity that acquires Products through the Partner, for use as an end-user and not for resale or distribution.

**Force Majeure Event** means an event, or a series of related events, that are outside the reasonable control of the Party affected, including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, Malicious Code, power failures, industrial disputes affecting any third party, changes to applicable law, disasters, explosions, fires, floods, riots, terrorist attacks and wars.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law, equity or any corresponding law, in or in relation to copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other proprietary rights, whether created before or after the date of this ECLA, whether in Australia or otherwise, and whether or not registrable, registered or patentable.

**Loss** means loss, damage, liability, charge, expense, cost naturally arising (including reasonable legal costs) of any nature or kind.

**Malicious Code** means 'back door', 'time bomb', 'logic bomb', 'Trojan horse', 'worm', 'drop dead device', 'virus' or any other malware, spyware or computer software routine having the effect of: (a) permitting unauthorised access to or use of any Products; or (b) disabling, damaging, corrupting or erasing, or disrupting or impairing the normal operation of any part of the Products, or allowing any person to do so.

**Non-Conformance** means a failure to observe or a contravention to the terms and conditions outlined in the Agreement.

**Non-Production Tenant** means allocation of a Tenant to You and which is not licenced for production use or general User access but is accessible for development and/or testing with limited number of Users as defined in the Readiness Order Form.

**Non-Readiness Applications** means third party applications, products or Third-Party Content that may be interoperable with the Products.

**Platform Support and Maintenance Services** means Standard Platform Support, Standard Plus Platform Support and Maintenance Plan or Elite Platform Support and Maintenance Plan in accordance with clause 5.

**Partner Portal** is an online Portal for the Authorised Partner accessed via the Tenant.

**Party** means a party to this ECLA.

**Personal Information** has the same meaning given to that term by the Privacy Act 1988 (Cth).

**Personnel** means the officers, employees, directors, contractors or agents of a Party.

**Planned Maintenance** means the periods of downtime to perform maintenance on the Products. Such maintenance may include but is not limited to new releases, improvements, patches, repair, relocation, or upgrades, or related maintenance to a network, or internet service provider failures or delays, or denial of service attacks or hardware or the maintenance requirements of an interconnected supplier, who is required to undertake such work relevant to the provision of the Products.

**Privacy Law** means the *Privacy Act 1988* (Cth).

**Products** means the Readiness software, platform and online services including all products or services of Readiness (including Platform Support and Maintenance Services, number of Users, Tenant, and Non-Production Tenant,) that an Authorised Partner has purchased, or will purchase for Your use in the relevant Readiness Order Form.

**Readiness Order Form** means the Readiness order form setting out the terms for the purchase of Products by an Authorised Partner on Your behalf.

**Term** means the period of the term of any Readiness Order Form for Products and any renewal term.

**Tenant** means a shared environment which is Your portion of a multi-Tenant platform serving multiple customers.

**Third-Party Content** means content, material or information used by You not produced by Readiness, including that obtained by third party applications; content providers and information that is publicly available (as more fully described in the Documentation).

**Users** means Personnel who are permitted users of the Products authorised by You in accordance with the number and type of user licences (User Access, Lite User and Concurrent Users) as procured on the relevant Readiness Order Form to Readiness by an Authorised Partner for You to access and use the Products, and who You or the Authorised Partner have supplied with a User identification and password.

## 2. LICENCE TO USE

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### 2.1 Permitted Users

- (a) Readiness grants You a non-exclusive, non-sublicensable, revocable, non-transferable licence (except as expressly permitted under this ECLA), for the permitted use of the Products as set out in the relevant Readiness Order Form, during the Term and further renewal term on the terms of this ECLA, solely for Your internal business purposes;

- (b) You will ensure that Your Personnel, and any other of Your authorised Users to the extent that they are Users of the Products, comply with the licensing terms and permitted use as set out in this ECLA, the Readiness Order Form, the Platform Support and Maintenance Services and Documentation. The Products may not be accessed by more than the number and type of Users as set out in the relevant Readiness Order Form, and You must ensure that no Users' passwords are shared with any other individual, and User Identification may only be reassigned to a new individual replacing one who will no longer use the Products.
- (c) You shall not private label or brand the Products with Your name, trademark or logo, or private label or brand the Products with that of a third party, or private label or brand the Products in any manner other than as Readiness Products, except as otherwise agreed in writing by Readiness.
- (d) Each Party must comply (and ensure that each of their Users, and Personnel comply) with all applicable laws and regulations and this ECLA.

## **2.2 Issuing of User Licences**

- (a) Readiness will provide the number and type of User licences and access to the Products purchased on the relevant Readiness Order Form.
- (b) You acknowledge that User access is granted per designated User and an individual licence cannot be shared or used by more than one User. A User may be reassigned to a new User who is replacing a former User who no longer require ongoing access to Readiness Products.
- (c) User Licences:
  - (i) User Access Licenses (**UAL**) are authorised Users having access to the Product with the Concurrent Licences as set out in the Readiness Order Form.
  - (ii) Concurrent Licences (**CL**) is the maximum number of authorised Users that may concurrently use the Product as set out in the Readiness Order Form.
- (d) Non-Production Tenant: Where a Non-Production Tenant has been purchased, You will have separate user licences as set out in the Readiness Order Form for named Users to obtain access for development and/or testing purposes only and not for production and is subject to the terms of the ECLA.
- (e) Any Application Builders (objects) You purchase as set out in the Readiness Order Form which will be subject to the terms of the ECLA.

## **2.3 Designated Representatives**

- (a) You will nominate at least two (2) and up to four (4) Designated Representatives and provide their names and contact details to Readiness and provide notification of any change to these details (including transfer of Designated Representatives' responsibilities to other individuals).
- (b) You shall ensure that Designated Representatives:
  - (i) are knowledgeable about the applicable Products and/or services to help analyse, and assist Readiness in resolving any issues;
  - (ii) are empowered to act on behalf of You to make decisions to facilitate speedy resolution;
  - (iii) have a good understanding and the ability to reproduce the problem that has been ticketed, to assist Readiness in diagnosing and triaging;
  - (iv) have completed administration training from Readiness as listed in the relevant Readiness Order Form and Documentation;
  - (v) attend any refresher training programs at least annually or as required; and
  - (vi) will treat all material provided as Confidential Information of Readiness.

## **2.4 Provision of Access**

- (a) You are responsible for granting access to Your Personnel to the allocated Tenant of the Products and related Products. You must not grant access to the Tenant or Products which is more than the number and type of User licences purchased from Readiness.

- (b) If Your use of the Products exceeds what is specified in the ReadNow Order Form, this will be considered a Non-Conformance.
- (c) You will take all necessary steps to prevent Non-Conformance and unauthorised use/access of the Products. You will promptly notify ReadNow and the Authorised Partner of any unauthorised access or use upon becoming aware of such unauthorised access.
- (d) You are liable for any Loss caused for a breach of permitted use or dispute raised by, a User in relation to the provision of the Product to those Users. ReadNow expressly excludes any liability to You or Your Users as a result of the use of the Product by a User or any Claim arising out of such use.

## **2.5 Conditions of Licence to Use**

- (a) You will not and will not allow Your Users to:
  - (i) breach any of the warranties or restrictions on use as set out in clause 6.1 of this ECLA;
  - (ii) display, transmit or otherwise make available material that is pornographic, obscene, or indecent;
  - (iii) display, transmit or otherwise make available material that is infringing, threatening, harassing, libellous, racially or ethnically objectionable, unlawful, harmful to children, invasive of another's privacy or violative of third-party privacy rights; or
  - (iv) display or transmit material promoting or providing instructional information about illegal activities, promoting physical harm or injury against any group or individual, or promoting any act of cruelty to animals, including, but not limited to, instructions on how to assemble bombs, grenades, and other weapons, and destroy sites.
- (b) You will have sole responsibility for the accuracy, quality, integrity, legality, reliability, handling and appropriateness of all Content and data including Customer Data submitted to, published via or stored on the ReadNow Products by You or by Users, or by users of websites created by You using the Products.
- (c) You acknowledge ReadNow will have no visibility into the information or data uploaded into or stored by You in the Customer Data and You agree that ReadNow is not responsible for Customer Data.
- (d) ReadNow may need access to the Customer Data and Tenant for the purpose of diagnosing and/or fixing any issues as required. ReadNow may disclose anonymous data about Your use of the Products for the purpose of improving user experience with the Products, or as required by law; and
- (e) ReadNow may remove or request that You remove any Products, Content or Customer Data from the Tenant due to Your or Your Users breach of this ECLA, at the request of a third-party provider, or due to illegality.
- (f) ReadNow shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store or restore any of Customer Data. ReadNow reserves the right to withhold, remove and/or discard the Customer Data without notice to comply with relevant laws;
- (g) ReadNow does not provide any guarantees as to the availability of Customer Data or other information including customisations made to the Products after the expiry or termination of this ECLA.
- (h) You agree to comply with all applicable laws in using the ReadNow Products and in accordance with the Documentation.
- (i) ReadNow provides the Tenant on an 'as is' basis and subject to the terms of this ECLA. You acknowledge that the Tenant may contain bugs or errors and any production use of the Tenant is at Your sole risk. You acknowledge that the Tenant may not be a full release of the Products and that ReadNow makes no commitment for support or turnaround levels of availability. In no circumstances shall ReadNow have any liability hereunder to You or Your Personnel for any Loss or Indirect Loss arising from the use of the Tenant.

## **3. CUSTOMER DATA**

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### **3.1 Customer's Intellectual Property**

- (a) ReadiNow acknowledges and agrees that nothing in this ECLA transfers or gives ReadiNow any Intellectual Property Rights in, or other rights in respect of, any Customer Data.
- (b) You grant ReadiNow a non-exclusive licence to the Customer Data solely for performing its obligations under this ECLA. Any Customer Data that the Users provide to ReadiNow is and will remain You or Your licensors property.

### **3.2 Privacy Laws**

- (a) Each Party must comply with any obligations it may have under Privacy Law and any other relevant laws relating to the collection, storage and use of Personal Information in carrying out its obligations under this ECLA. You must comply with any obligations and applicable laws relating to Your Customer Data. You acknowledge that ReadiNow's obligation in this clause applies only to New South Wales, Australian law. If You provide to ReadiNow any Personal Information of Your personnel, Users or any other person, or You Authorise ReadiNow to collect, store or process such Personal Information on Your behalf, You must first ensure that You have informed those persons of the purpose for which their Personal Information will be used, in accordance with the requirements of the Privacy Law and any other relevant laws. You warrant to ReadiNow that at the time of providing or otherwise making available such Personal Information You have obtained the consent of those persons to provide that Personal Information to ReadiNow and for ReadiNow to process that Personal Information as contemplated by this ECLA. You will indemnify ReadiNow and its Personnel, in respect of any Loss (including Consequential Loss, despite anything to the contrary in clause 8.1(b)) suffered in connection with Your breach of this clause 3.2. This clause 3.2 will survive the termination or expiry of this ECLA.

### **3.3 Non-ReadiNow Applications**

- (a) You acknowledge that if You use Non-ReadiNow Applications with the Products, You may be giving Non-ReadiNow applications and third party content providers access to Customer Data that they require for their interoperation with the Products.
- (b) ReadiNow will not be responsible for any such access by Non-ReadiNow Applications, the providers of the Non-ReadiNow Application for any disclosure, modification or deletion, damage or destruction of Customer Data resulting from such access whilst in use with the Products.
- (c) You agree that Your right to use the Non-ReadiNow Applications is governed by the terms of the relevant third-party licence/services agreement entered by You, and not under the terms of this ECLA.
- (d) ReadiNow does not warrant, nor will ReadiNow provide Platform Support and Maintenance Services for Non-ReadiNow Applications, other services or Content of a third party except as specified in a ReadiNow Order Form.

### **3.4 Right to Audit**

ReadiNow reserves the right to conduct an audit of Your usage of the Products and for any Non-Conformance with the terms of this ECLA at least once a year; and at any reasonable time during business hours by giving prior notice to You.

### **3.5 Notice of Non-Conformance**

- (a) If ReadiNow or the Authorised Partner becomes aware of a Non-Conformance, the Authorised Partner will notify You. You agree to rectify the Non-Conformance within ten (10) Business Days of receiving that notification and take the following actions to resolve the Non-Conformance;
  - (i) In the case of a User licence Non-Conformance, You will upgrade the User licence via the Authorised Partner to bring the usage into line in accordance with ReadiNow's standard licencing terms and pay the Authorised Partner any adjusted fee for the period of Non-Conformance and future use;
  - (ii) In the case of any other Non-Conformance not covered by clause 3.5(a)(i) above, You may purchase the appropriate items from the Authorised Partner to ensure conformance with the ReadiNow standard licensing terms and pay the Authorised Partner the adjusted fee; or

- (iii) You may resolve a Non-Conformance with the Authorised Partner by addressing the operational use of the Products in accordance with Readiness's standard terms and Authorised Partner fees.
- (b) If You fail to address the Non-Conformance in accordance with clause 3.5(a), the Authorised Partner or Readiness may suspend the provision of Products, Platform Support and Maintenance Services, terminate this ECLA or any other agreement relating to the Products, in their sole discretion.

## **4. SERVICES**

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### **4.1 Telecommunications and Internet Requirements**

- (a) Readiness will use commercially reasonable efforts to make the Products set out in the Readiness Order Form available 24 hours per day, 7 days a week, except for Planned Maintenance, delay event, or a Force Majeure event and will provide the Products in accordance with the applicable Australian laws and government regulations.
- (b) You acknowledge and agree that the delivery dates are target dates only. Should the Authorised Partner notify You that the delivery dates cannot be met for any reason, You and the Authorised Partner, acting reasonably, shall agree alternate delivery dates, in consultation with Readiness. Readiness shall not be regarded as breaching the ECLA and shall not be liable for any Loss to You or to any third party as a result of any change to the delivery dates.
- (c) You acknowledge that You are responsible for providing (at Your own cost) all computer and telecommunications facilities that You require to access and use the Products and/or services over the internet.
- (d) You acknowledge that the Products are designed for use with certain internet browsers and require certain functionality to be enabled in order to properly function, as listed in the Documentation and updated from time to time. You are solely responsible for configuring such facilities and browser functionality so that the permitted Users can access and use the Products.

### **4.2 Non-Readiness Products.**

- (a) Readiness or third parties may from time to time provide Non-Readiness Applications for use with the Products.
- (b) You agree that You will, at Your cost, obtain and maintain all licences, support and maintenance in respect of any Non-Readiness Applications or Third-Party Content.
- (c) Readiness will not be liable to You for any Loss caused by Your use of Non-Readiness Applications or Third-Party Content.

### **4.3 Non-Readiness Applications, Third Party Content and Integration**

The Products may contain features intended to facilitate its interoperability with Non-Readiness Applications. If the provider of a Non-Readiness Application ceases to make the Non-Readiness Application or feature available for interoperation with the Products, this is not a defect in the Products and Readiness will not be responsible.

### **4.4 Removal of Non-Readiness Applications and Third-Party Content**

- (a) If Readiness determines or is advised that any Non-Readiness Application violates any law or infringes the Intellectual Property Rights of any third party, it may remove or disable the Non-Readiness Application. Alternatively, the Authorised Partner may notify You, and You will promptly disable or modify the relevant Non-Readiness Application to resolve any potential Non-Conformance with the terms of this ECLA.

## **5. Platform Support and Maintenance Services**

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### **5.1 Platform Support and Maintenance Services**

- (a) Readiness will provide Platform Support and Maintenance Services under the Platform Support and Maintenance Plan specified in the relevant Readiness Order Form and on the terms set out in the Documentation and the relevant Platform Support and Maintenance Plan <http://readiness.com/support-plans>, as updated from time to time. Your acceptance of this ECLA is acceptance of Platform Support and

Maintenance Services in <http://readinow.com/support-plans>, as purchased in the relevant Order Form.

- (b) ReadNow will perform such Platform Support and Maintenance Services as it considers reasonably necessary to ensure that the Products remains in substantial conformity with the Documentation.
- (c) You may purchase an upgraded level of Platform Support and Maintenance Services suitable for Your needs through the Authorised Partner in accordance with the relevant ReadNow Order Form. However, only one type of Platform Support and Maintenance Plan will be serviced per Tenant.

## **6. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS**

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### **6.1 Your warranties**

You warrant that You will not:

- (a) resell, sublicense, lease, or otherwise make the Products available to any third party including (without limitation) a Competitor, for any purpose without ReadNow's prior written consent;
- (b) reverse engineer, decompile or reverse compile, disassemble, list, modify, copy or create derivative works based on the Products; propagate any Malicious Code using the Products; print or display the Products or otherwise attempt to obtain the source code or other proprietary information from the ReadNow Products;
- (c) access the Products for the purposes of building a competitive product or service or copying its features or functionality; or permit any person, other than ReadNow, to modify, copy or create a derivative work based on any part of the ReadNow Products;

### **6.2 ReadNow warranties**

- (a) ReadNow warrants that:
  - (i) it has the authority to grant the rights granted to You under this ECLA and each ReadNow Order Form;
  - (ii) the Products shall perform materially in accordance with the Documentation and functionality of the Products will not materially decrease during the Term; and
  - (iii) the use of the Products by You in accordance with this ECLA and the relevant ReadNow Order Form will not infringe the Intellectual Property Rights of any person or impose any obligation on You to pay any royalty.
- (b) ReadNow is not liable under clauses 6.2 and 6.3 to the extent that any infringement or defect is caused, or contributed to, by (without limitation):
  - (i) Your or the Authorised Partner's input of Customer Data, modification to the Products or any output therefrom by You that is not authorised by this ECLA;
  - (ii) use of the Products or any third-party Intellectual Property Rights in a manner that is not in accordance with this ECLA, relevant ReadNow Order Form, or Documentation;
  - (iii) misuse, abuse, accidental damage, improper handling or improper maintenance or support by anyone other than ReadNow or persons acting under their control, without the prior written consent of ReadNow;
  - (iv) damage to the operating system or data files caused by power surges, power reductions or failure, defective electrical work, fire, flood, water, wind, lightening or other natural phenomena; or
  - (v) any failure or malfunction of any third-party software or third-party equipment.
- (c) Without limiting the generality of the foregoing, ReadNow does not represent or warrant that Your use of the Products, will meet Your requirements or will be uninterrupted, timely secure or free from error.
- (d) Your sole remedy for ReadNow's breach of clause 6.2 is for ReadNow, at ReadNow's expense, to correct, repair or replace (at ReadNow's election) the defective component of the ReadNow Products.

### 6.3 Disclaimers

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

## 7. INTELLECTUAL PROPERTY

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### 7.1 Acknowledgments and obligations

- (a) You acknowledge and agree that ReadNow and its related bodies corporate owns and has licences for the Intellectual Property Rights in the Products, the Documentation, the electronic tools and systems, and all source code and any future functionality including but not limited to any enhancements; and ReadNow has unlimited right to develop, use and incorporate into the Products any suggestions, or enhancements requests.
- (b) You acknowledge and agree that nothing in this ECLA transfers or gives You any Intellectual Property Rights in, or other rights, title or interest in respect of, any ReadNow Documentation or Products, except as set out in this ECLA.

### 7.2 IP Claims

- (a) You must notify ReadNow immediately if You become aware of any claim or proceeding alleging that the whole or a part of an item, or its use under this ECLA, infringes (or would infringe) a person's Intellectual Property Rights (**IP Claim**) in relation to the Products with details of such IP Claim. ReadNow may take control of and deal with such IP Claim, and direct You as required in relation to the IP Claim.
- (b) Subject to paragraph (c) below, if there is, or in the reasonable opinion of ReadNow is likely to be, an IP Claim in relation to the Products, ReadNow will, at its expense, either:
  - (i) modify or replace the Products so that any infringement (or alleged infringement) is removed; or
  - (ii) make reasonable commercial efforts to procure the right for You to continue to use the Products.
- (c) ReadNow is not required to comply with paragraph (b) above if the IP Claim is caused or contributed to by:
  - (i) Your breach of this ECLA;
  - (ii) without limiting sub-paragraph (i) above, Your use of Products other than the latest unaltered version of the Products made available to You by ReadNow where Your use of that latest version would not have given rise to an IP Claim; or
  - (iii) any negligent acts or omissions of You, Your Personnel, or a User.
- (d) Without limiting any of ReadNow's other remedies, including the right to terminate this ECLA for material breach immediately, if the IP Claim is caused by Your or Your Users' action or omission, including under clause 7.2(c), ReadNow may direct You to remedy that action or omission and you will promptly comply with such direction.

## 8. LIABILITY

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### 8.1 Limitation of liability

- (a) Except to the maximum extent permitted by law or as otherwise expressly provided in this clause, the aggregate liability of ReadNow (whether under statute, in contract or in tort, including for negligence, or otherwise and any indemnities) under this ECLA or any ReadNow Order Form is limited to AUD\$50,000.
- (b) Except as otherwise expressly stated herein, neither Party will be liable to the other (or to any person or entity claiming through such other Party) for the other Party's Consequential Loss arising out of this ECLA.
- (c) You must take reasonable steps to mitigate any Loss You incur in connection with this ECLA and its breach.

### 8.2 Rights and remedies under applicable legislation

Legislation may imply warranties or conditions or impose obligations or liability on ReadiNow in respect of this ECLA that cannot wholly or partly be excluded, restricted or modified. If this occurs, the liability of ReadiNow is limited, to the extent permitted by the applicable legislation, at its option, to the replacement or resupply of the goods or services again.

8.3 This clause 8 will survive the termination or expiry of this ECLA.

## 9. FORCE MAJEURE

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### 9.1 Notice

- (a) A Party is not liable for any delay or failure to perform its obligations (except an obligation to pay money) pursuant to this ECLA or any ReadiNow Order Form to the extent that such delay or failure is due to a Force Majeure.
- (b) A Party that becomes aware of a Force Majeure which gives rise to, or which is likely to give rise to, any failure or delay in that Party performing any obligation under this ECLA or a ReadiNow Order Form, must:
  - (i) promptly notify the other Party; and
  - (ii) inform the other Party of the period for which it is estimated that such failure or delay will continue.
- (c) If a Force Majeure Event continues for a period exceeding 30 days, either party may terminate the ECLA immediately by giving the other party written notice.

## 10. TERMINATION

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### 10.1 Termination for cause

- (a) In addition to any other rights and remedies at law, this ECLA, or any ReadiNow Order Form, may be terminated by a Party immediately at any time by written notice if the other Party ("**Defaulting Party**"):
  - (i) becomes insolvent, becomes subject to external administration or ceases or indicates an intention to cease to carry on its business;
  - (ii) has committed a material breach of its obligations under this ECLA which it fails to remedy within 30 days after receiving a written notice from the other specifying the breach and requiring it to be remedied.
- (b) In addition, ReadiNow may by written notice immediately terminate this ECLA and/or a ReadiNow Order Form if any of the following occurs:
  - (i) You (or any Users) engages in fraudulent, illegal or unauthorised use of the Products or causes or permits the Products to be affected by Malicious Code;
  - (ii) You (or any Users) commit a serious breach of this ECLA or a warranty; or
  - (iii) ReadiNow becomes aware or is advised by any regulatory authority that applicable laws, or any decision of a court or government authority, prohibits the provision of the Products to You;

### 10.2 Effect of Termination

- (a) If this ECLA or a ReadiNow Order Form is terminated by ReadiNow (where You are the Defaulting Party) under clause 10.1(a) or where ReadiNow terminates under clause 10.1(b) then;
  - (i) All rights and access to or use of the Products listed in and the applicable ReadiNow Order Form shall end;
  - (ii) ReadiNow must return or destroy all Confidential Information and Intellectual Property Rights in ReadiNow's possession, (excluding historical backups of data stored on non-dedicated database within a multi-tenanted platform where ReadiNow will ensure security of the data, until it can be irretrievably deleted or destroyed), belonging to You relating to this ECLA or the relevant ReadiNow Order Form; and

- (iii) Following termination of this ECLA or any ReadNow Order Form You must immediately pay the fees or any other amounts that You owe to the Authorised Partner, including the balance of the fees that would have been payable for the remainder of Term of the relevant ReadNow Order Form. You agree that this is a genuine pre-estimate of the loss likely to be suffered by ReadNow and Authorised Partner in performing their obligations.
- (iv) You must at Your own expense remove all the Customer Data, from the Products, and at the option of ReadNow, immediately return to ReadNow, or destroy in accordance with ReadNow's instructions, all Confidential Information of ReadNow, or any Intellectual Property Rights of ReadNow, and all access codes, passwords and keys of any type, and Products and any other materials in Your possession.

### **10.3 Disengagement**

- (a) If requested in writing by You or the Authorised Partner within 30 days of termination date of the ECLA, ReadNow will make available to You for download a file of the Customer Data, within 30 days from this request;
- (b) After the period set out in clause 10.3(a), ReadNow shall have no obligation to maintain or provide any Customer Data and may delete all Customer Data in ReadNow's systems or otherwise in ReadNow's possession or under ReadNow's control, except to the extent that it is not lawful to do so;
- (c) If You do not remove the Customer Data before the termination notice period expires or request it set out in clause 10.3(a), then You acknowledge and accept Customer Data may not be retrieved and will be lost.
- (d) For the avoidance of doubt, ReadNow will not be liable for any Loss arising from Your failure to retrieve the Customer Data under this clause 10.3.

## **11. INDEMNITIES**

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### **11.1 Indemnification**

- (a) You agree to indemnify ReadNow and its Personnel, in respect of:
  - (i) any Loss suffered in connection with, a breach of any of Your obligations under this ECLA; and
  - (ii) any Loss (including Consequential Loss) suffered in connection with any Claim, or IP Claim, by any third party arising from Your breach of any licence of any Intellectual Property Rights given to You under this ECLA.
- (b) You will indemnify and hold ReadNow, its Personnel and related bodies corporate harmless against any Claim made or brought against ReadNow by a third party alleging that Customer Data, Your modifications, Your developed applications, or applications developed for You, or Your use of Non-ReadNow Applications, or content infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law (to the extent such infringement does not arise from the ReadNow Products), and You will indemnify ReadNow for any Loss (including Consequential Loss) incurred by ReadNow in connection with any such Claim.
- (c) The indemnities under this clause 11 are independent of Your other obligations arising out of this ECLA and survive termination or expiry of this ECLA.

## **12. CONFIDENTIALITY**

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### **12.1 Use and disclosure of Confidential Information**

A Party must not, directly or indirectly:

- (a) use any Confidential Information of the other Party except to the extent necessary for the performance of its obligations under this ECLA (**permitted use**); or
- (b) disclose any Confidential Information of the other Party except in accordance with clause 12.2, without first obtaining the other Party's written consent. For the avoidance of doubt, this clause 12 survives termination of the agreement.

### **12.2 Permitted disclosures**

A Party may disclose Confidential Information to Personnel who need to know that Confidential Information for the permitted use or to comply with:

- (i) a legally enforceable requirement to do so, including an order of a court or tribunal of competent jurisdiction; or
- (ii) a requirement of a regulatory body where that requirement is legally enforceable.

### **12.3 Protection of Customer Data**

You understand that:

- (a) use of the Products, necessarily involves the uploading, entering and transmission of Customer Data over networks that are not owned, operated or controlled by ReadNow. ReadNow is not responsible for any Customer Data accessed, damaged, corrupted, misused, lost, altered, intercepted or stored across such networks;
- (b) ReadNow will employ such reasonable measures as are appropriate and consistent with what a reasonable provider of such Products would employ, including administrative, physical and technical safeguards designed to prevent access, use, modification or disclosure of Customer Data by ReadNow Personnel (except where that disclosure or access is required under law, or for the purpose of performing this ECLA) but ReadNow cannot warrant that such measures are to be error free; and
- (c) the Products may be hosted by a third-party cloud services provider (for example Amazon Web Services) and where the Products are so hosted, the ReadNow may have no ability to directly access, inspect or control the hosting environment.

## **13. GENERAL**

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### **13.1 Assignment**

- (a) ReadNow may novate, declare a trust over, assign, or otherwise create an interest in its rights under this ECLA upon providing You with 30 days' notice.
- (b) You may dispose of, novate, declare a trust over, assign, or otherwise create an interest in Your rights under this ECLA if ReadNow provides its prior written consent (such consent will not be unreasonably withheld). For the avoidance of doubt, ReadNow will not be obliged or required to provide consent if You propose to assign any or all Your rights under this ECLA to a party who is, in ReadNow's opinion, a Competitor.

### **13.2 Governing law**

This ECLA is governed by and construed in accordance with the law in force in New South Wales, Australia. Each Party submits irrevocably and unconditionally to the exclusive jurisdiction of the courts, whether state or federal, exercising jurisdiction in New South Wales, Australia and any court that may hear appeals from any of those courts, for any proceedings in connection with this ECLA, and waives any right it might have to claim that those courts are an inconvenient forum. This clause 13.2 will survive the termination or expiry of this ECLA.

### **13.3 Waiver of rights**

A right may only be waived in writing, signed by an authorised representative of the Party giving the waiver, and:

- (a) no other conduct of a Party (including a failure to exercise, or delay in exercising the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### **13.4 Cumulative Remedies**

Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

### **13.5 Severability**

If anything in this ECLA is unenforceable, illegal or void then it is severed and the rest of this ECLA remains on foot.

### **13.6 Entire agreement**

This ECLA constitutes the entire agreement and understanding between the parties on everything connected with the subject matter of this ECLA and supersedes any prior agreement or understanding on anything connected with that subject matter.

### **13.7 Relationship**

Except as expressly provided in this ECLA, neither this ECLA nor any activity under it constitutes a joint venture, agency, partnership, employment or other similar relationships under which a party may be liable for any act or omission of the other party. The parties are independent contractors.

### **13.8 Publicity**

Except as provided under clauses 13.8 (a) and 13.8(b), or as required by law, neither party may make or authorise a press release or other public statement relating to this Agreement or the relationship between ReadNow and the Partner without the other party's prior written consent.

- (a) The Partner acknowledges and agrees that ReadNow may refer to the Partner and use the Partner's name, brands and trademarks in ReadNow's physical marketing materials and on ReadNow's website, and ReadNow may include links to the Partner's website on the ReadNow website.
- (b) Notwithstanding the above the Partner acknowledges and agrees that ReadNow may add the Partner's logo on ReadNow's website with no obligation by the Partner to provide any further links or details.

### **13.9 Consents and approvals**

If anything in this ECLA is subject to the consent or approval of a party then, unless expressly stated otherwise, that consent or approval may, to a reasonable extent, be given or withheld at the absolute discretion of that party.

### **13.10 No Third Party Benefit**

The parties acknowledge and agree that the provisions of this ECLA are for the sole benefit of the parties hereto, and are not for the benefit, directly or indirectly, of any other person or entity.

### **13.11 Notices**

- (a) A notice, consent or other communication under the ECLA is only effective if it is in writing, signed and delivered to the other party to the address on the relevant Order Form.
- (b) If the Notice is sent or delivered in a manner provided by clause 13.10(a), it must be treated as given to and received by the party to which it is addressed:
  - (i) if sent by post: (a) on the third Business Day after posting if it is posted within Australia or (b) the seventh Business Day if posted to or from an address outside of Australia;
  - (ii) if sent by email: (a) before 5 p.m. on a Business Day, on the same day, (b) otherwise, on the next Business Day at the place of receipt; or
  - (iii) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- (c) Despite clause 13.10(a):
  - (i) an email message is not treated as given or received if within 2 hours after the time sent, the sender receives an automated message that the email has not been delivered;
  - (ii) an email message is not treated as given or received if the sender receives an automated out of office message from the addressee of the email message at any time on the day on which the email message was sent; and
  - (iii) an email is not treated as given or received if the addressee notifies the sender that the email was not received in full and in legible form within 3 hours after receipt of the email or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.