



EROAD's TERMS

A. INTRODUCTION

EROAD provides Hardware and related Services and Applications (including for use with its products) for the purposes of providing tax management, compliance and commercial services. These Terms explain EROAD's obligations in the provision of the Hardware, Services and Applications and your obligations as EROAD's Customer.

Some Services (e.g. EZfuel Report, Over Speed Reports, Fleet Activity) require you to have Hardware installed in your vehicles. You may (i) rent the Hardware and access Services in a bundle from EROAD for a monthly fee or (ii) purchase the Hardware and pay EROAD a monthly fee to access Services. However, please note some Hardware may be available on a purchase option only. Other Services (e.g. Driver Vehicle Inspection Reports, Electronic Logbooks) are made available by EROAD to customers and their drivers for access on their portable smart devices via EROAD's Applications.

B. AGREEMENT STRUCTURE

The Agreement is made up of the following:

- (a) These Terms, which contain general provisions that apply to all Hardware and Services provided to you under the Sales and Services Agreement. These Terms may change from time to time in accordance with clause 12.5. For the most up to date copy see our Website;
- (b) a Sales and Services Agreement, which is each agreed quote that describes the Hardware and Services we will provide to you; and
- (c) where applicable, the End User Licence Agreement for an Application.

On signing a copy of the Sales and Services Agreement, or having Hardware installed in your vehicle, or by accessing the Services, or downloading an Application, you accept and agree to be bound by the Agreement.

C. IMPORTANT

It is important that you read the Agreement in full prior to using EROAD's Hardware, Services or Applications, but some points we want to bring to your attention are:

- (a) **Minimum Term** – our Services are subject to a Minimum Contract Term which is specified in the Sales and Services Agreement. If you want to terminate the Agreement before the end of the Minimum Contract Term, you can, but you must return all rented Hardware and pay the Early Termination Fees as set out in clause 5.8 below.
- (b) **Privacy** – EROAD cares about your privacy. We collect Data and use this information to continually provide you innovative products and services tailored to your needs. If you want to know more about how we collect, use, store, disclose and protect your Data, please read our [Privacy Policy](#).



D. TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. In these Terms:

Additional Fees means the ancillary fees for the provision of Hardware and Services including installation fees and travel costs, refurbishment fees, credit card convenience fees and fees for any accessories necessary for the installation of Hardware.

Agreement means these Terms, the Sales and Services Agreement and, where applicable, the End User Licence Agreement, as may be renewed or amended from time to time.

Application means any software program developed and made available by EROAD for download by Customer or its drivers for use on a portable smart device.

Authorised User means any person:

- (a) given access to the Services by Customer; or
- (b) to whom Customer wishes to give access to Data.

Commencement Date means the earlier of the date that the:

- (c) Agreement is signed by Customer;
- (d) Hardware is installed in Customer's Vehicle; or
- (e) Services are first accessed by Customer or an Authorised User.

Customer means the EROAD customer identified in the Sales and Services Agreement.

Data means all information:

- (a) inputted into the Services by Customer;
- (b) automatically generated or collected by:
 - (i) an Application or a Website used by a Customer, its drivers or anyone for whom the Customer is responsible; or
 - (ii) the Hardware which has been installed into Customer's Vehicle; or
- (c) that the Customer supplies, or consents to a third party supplying, to EROAD.

Early Termination Fee has the meaning given in clause 5.8.

End User Licence Agreement means an agreement that applies where the Customer, or the Customer's employee, agent or contractor, downloads an Application.

EROAD means EROAD Pty Limited of Australia.

EROAD Approved Installer means a third party installer previously approved by EROAD to install its Hardware.

Fees means:

- (a) where Customer is renting the Hardware, the bundled fees charged by EROAD to Customer for renting the Hardware and accessing the Services;
- (b) where Customer has purchased the Hardware by paying the Hardware Price, the fees charged by EROAD to Customer for accessing the Services; or
- (c) where the Customer is only accessing Services but not acquiring Hardware, the fees charged by EROAD to access the Services,



and which are stated in the Sales and Services Agreement or in the invoices issued by EROAD and include Additional Fees.

Force Majeure Event means an act of God, strike, lockout, war (declared or undeclared), blockade, act of public enemy, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental restraint, riot, civil commotion, expropriation, prohibition, intervention or embargo, industrial conditions, electrical, telecommunications, or other utility or network failures, or other event which is not within the control of the affected Party, but excludes:

- (a) any event which the party affected could have avoided or overcome by exercising a standard of reasonable care at a reasonable cost; or
- (b) a lack of funds for any reason.

GST means any goods and services tax imposed by the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time, and any associated legislation and regulations to the extent they relate to GST.

Guarantee means a guarantee signed by a Customer's director or third party stating that the guarantor agrees to meet all of the Customer's financial obligations under this Agreement in the event the Customer breaches these Terms.

Hardware means each unit of hardware supplied by EROAD to Customer during the term of the Agreement, including hardware that is sold, rented or loaned to Customer or is installed in Customer's Vehicles.

Hardware Price means the price for the purchase of the Hardware.

Intellectual Property Rights means rights to patents, trade marks, service marks, trade names, inventions, trade secrets, copyright, moral rights, design rights, look and feel, know-how and any other similar rights.

Interest Rate means, in respect of any rate of interest to be calculated pursuant to this Agreement, the overdraft base interest rate as quoted on the website (or any successor website) of EROAD's bank at or about 10.00 am on the first working day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding working day of the period.

Minimum Contract Term means the minimum term specified in the Sales and Services Agreement under which Customer must either:

- (a) acquire each unit of Hardware and the associated Services, or
- (b) acquire stand-alone Services (if the Customer is purchasing or not acquiring Hardware); and

the Minimum Contract Term shall commence:

- (c) for each Hardware unit, on the date EROAD issues its first invoice to Customer for that Hardware unit and the associated Services; or
- (d) where the Customer is acquiring a stand-alone Service (such as EROAD Inspect), on the date that the Service is first made available to the Customer.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by you as a consequence of, or otherwise in connection with, this Agreement.



Privacy Act means the *Privacy Act 1988* (Cth), as amended or replaced from time to time.

Privacy Law means all legislation, principles, industry codes and policies, as amended or replaced from time to time, which relate to the collection, use, disclosure, storage or granting of access rights to Personal Information, and includes the Privacy Act.

Sales and Services Agreement means each quote signed by the parties, which describes the Hardware and Services we will provide to you, as well as the Minimum Contract Term, Price and Fees that apply to the Hardware and Services.

Secured Money means all money which the Customer is or at any time may become actually or contingently liable to pay to or for the account of EROAD for any reason.

Services means the services provided by EROAD via the Applications, Website or in relation to the Hardware.

Software means any software embedded in the EROAD's Applications, the web-based information management software made available on the Website, and software used in connection with, or embedded on, the Hardware.

Terms means these terms and conditions.

Vehicle means a Customer vehicle, mobile machinery or equipment into which the Hardware is, or will be, installed.

Website means www.eroad.com.au, depot.eroad.com.au or any other website operated by EROAD.

we, us means EROAD.

you, your means the Customer.

1.2 Interpretation:

- (a) section, clause and other headings are for ease of reference only;
- (b) the word person includes a corporation;
- (c) words importing the singular include the plural and vice versa; and
- (d) if there is a conflict between the terms of the Sales and Services Agreement and these Terms, then, to the extent of the conflict, these Terms will prevail unless there is express provision to the contrary in the Sales and Services Agreement.

2. EROAD'S RESPONSIBILITIES

2.1 Hardware. EROAD strives to provide customers with state-of-the-art Hardware. Subject to you meeting your obligations under this Agreement, when we provide Hardware to you, we provide manufacturer's warranties in accordance with clause 10. We will also pass on the full benefit of any manufacturer's warranty you are eligible for in respect of hardware or accessories manufactured by a third party but purchased from us.

2.2 Services. EROAD strives to provide customers with great Services. Subject to clause 5.1, we grant you a non-exclusive, non-transferable licence to use the Software provided or acquired by you with the Hardware, Services, Applications or Website in accordance with the Agreement and solely for your own internal business use during the Term. We also make the following commitments to you:

- (a) We will endeavour to provide quality Services to you at all times and with reasonable care and skill. However, while we intend to make the Services available 24 hours a day, 365 days a year, we cannot guarantee that the Services will be continuous, fault free or available at any particular location because:



- (i) the Services may be unavailable at times due to maintenance, repairs, upgrades or modifications to our Services. Where such interruptions are scheduled, we will use reasonable efforts to provide advance notice on the Website and try and keep such unavailability to a minimum; and
- (ii) the Services depend on availability and proper performance of third party systems and networks, such as computer networks, mobile networks and the Internet, as outlined in clause 3.

(b) We will provide the Services in accordance with the warranties set out in clause 10.

2.3 Customer Support. Customer support is a key focus of EROAD. We provide a number of self-service customer support channels which are detailed on the Website. Typically, our customers have found that these self-service customer support channels are the most efficient way of initially diagnosing and resolving concerns customers have with EROAD's Hardware or Services. If you are unable to resolve your concerns via these channels, you can contact EROAD. EROAD or a third party engaged by us will provide a reasonable level of advice by remote means on how to remedy any problem with the Services and Hardware.

3. NETWORK DEPENDENCIES

3.1 GPS Networks. The Hardware units receive signals from Global Positioning Satellites (GPS Networks) and use cellular telephone technology as the transmission mode for sending signals to EROAD. EROAD has contracted with one or more wireless carriers (Wireless Carriers) to provide data transmission services for the Hardware units over a cellular telephone network.

3.2 Signal interruption. You acknowledge that it is improbable that GPS Networks or Wireless Carriers will have 100% coverage or functionality in any area at all times due to many conditions, including:

- (a) Wireless transmission range and capacity limitations and cellular telephone network capacity limitations;
- (b) Atmospheric, terrain and geographic conditions;
- (c) Other natural or artificial environment conditions or events beyond EROAD control;
- (d) Government regulations or limitations;
- (e) Restrictions by the Wireless Carriers (for example, inter-carrier roaming agreements);
- (f) Usage concentrations, modifications, upgrades, relocation and repairs of transmission facilities for the cellular telephone network;
- (g) Absence of a clear line of sight between the Hardware and the GPS Networks;
- (h) Electrical storms, power failures, interruption or unavailability of telephone service, cellular and radio frequency; and
- (i) Strikes, riots, floods, fires or acts of God,

and EROAD will not be liable to you, to the extent permitted by law, for loss of functionality of the Services caused by the signals to and from any Hardware unit being temporarily refused, interrupted, curtailed, limited or discounted for reasons beyond EROAD's control (including the reasons in paragraphs (a) to (i) above). EROAD will only be liable for loss of functionality of the Services caused by, or within the control of EROAD, its officers, employees, agents or subcontractors.

3.3 No third-party relationships. You acknowledge and agree that you have no contractual relationship with the Wireless Carrier and are not a third party beneficiary of any agreement between EROAD and the Wireless Carrier. You have no property right in any telephone number assigned to the Hardware and you understand and agree that any such number can be changed from time to time. EROAD will advise you of any such changes in writing prior to the change taking place.

4. CUSTOMER'S RESPONSIBILITIES

4.1 Installation of Hardware. You agree to be responsible for the proper installation of all Hardware according to our instructions and specifications. Where you self-install Hardware you agree that you are doing so at your own risk and you will ensure the Hardware and accessories (including the speed sensor)



are properly and safely installed in the Vehicle including in compliance with applicable laws and regulations and remain so for the term of the Agreement. You agree that EROAD is not liable for any improper installation that is caused by someone other than an EROAD Approved Installer. Hardware installation may require necessary modifications (including drilling screw holes and rewiring) to your Vehicle. We will not be responsible for any such damage caused to any Vehicle and will not be required to restore any Vehicle to its pre-installation condition if the Hardware is removed.

4.2 Care of Hardware. You agree to look after all rented Hardware and accessories and to pay for any repair or replacement if it is damaged while in your possession or control. However, you will not be liable for fair wear and tear or damage caused by us or anyone acting on our behalf. This requires you to, without limitation:

- (a) advise us as soon as you become aware of any Hardware or accessory (including speed sensor) malfunction;
- (b) where we provide you with an EROAD Approved Installer, agree with us when and where the installation will take place and make the Vehicle(s) available at such agreed time and location;
- (c) use the Hardware prudently and in accordance with our instructions;
- (d) keep the Hardware installed in the Vehicle and not transfer the possession of the Hardware without our prior written approval;
- (e) on request, make the Hardware available to EROAD for inspection, repair and replacement;
- (f) not alter, repair or recalibrate the Hardware or accessories;
- (g) protect Hardware from water, fire, vermin, insect infestation, theft and any other risks of loss or damage. You agree to insure the Hardware against theft, loss, damage or accidents to its full replacement value; and
- (h) notify us immediately of any loss, theft or damage to Hardware.

4.3 Proper Use. You will:

- (a) use the Hardware, Software, Services, Applications and Website for their intended purposes and in accordance with our directions;
- (b) not tamper, modify, copy, adapt, disassemble, decompile, make derivative works from or reverse engineer the Hardware or Software;
- (c) not use the Hardware, Software, Services Applications or Website for any illegal or offensive act;
- (d) not undermine the security and integrity of EROAD's computer systems or networks or Services;
- (e) not use the Services in any way that may impair the functionality of the Services, Software, Applications or Website;
- (f) not attempt to gain unauthorised access to any materials other than those made available to you by EROAD;
- (g) notify us of any improper or illegal use of the Software, Services, Hardware, Applications or Website;
- (h) comply with our directions regarding use of the Software, Services, Hardware or Website; and
- (i) be responsible for Authorised Users' use of the Hardware, Software, Application, Website and Services and ensure Authorised Users abide strictly with all applicable laws.

4.4 Security. You will:

- (a) keep secure and confidential all passwords used by you and your Authorised Users in connection with the Services;
- (b) notify EROAD of any unauthorised use of your or your Authorised User's password, unauthorised possession of or access to the Hardware or Services or any other breach of security;
- (c) not knowingly allow the Hardware, Services or Applications to be affected by any virus, worms or any destructive media;
- (d) be solely responsible for anyone who accesses or uses the Hardware, Services and Applications, whether authorized by you or not;
- (e) be responsible for granting proper authorization to Authorised Users; and



- (f) be solely responsible for everything that Authorised Users do when using the Services or Hardware.

4.5 Compliance. We have developed Services and Hardware to assist you in your tax management and compliance obligations. We also provide additional commercial Services that give you operational transparency and enhanced control over your Vehicles. You acknowledge however that the Services and Hardware have not been developed to meet your individual requirements and that it is your responsibility to ensure that the Services and Hardware meet your requirements and are suitable for your purposes. Therefore, you acknowledge that:

- (a) except as otherwise provided in the Agreement, your access to and use of the Services is on an "as-is" basis and at your own risk. You remain solely responsible for complying, and ensuring that all Authorised Users comply, with all applicable laws, rules and regulations, including without limitation those relating to installation of Hardware, operation of the Vehicle and codes of safe driving, use of the Hardware and Services, and any privacy and disclosure laws; and
- (b) we are not in the business of providing professional advice (e.g. taxation, vehicle safety or fleet management advice) and you are therefore responsible for verifying any information given by us before relying on or making use of it.

5. CHARGES, HARDWARE PRICE, FEES AND PAYMENT

5.1 Credit Approval. We rely on you to be able to pay your invoices on time. In some cases, you may need to provide a Guarantee as security for paying future charges. We may also obtain, or require a third party to perform, credit checks. You authorise us to obtain or require a third party to perform credit checks at any time on you (including your directors) or on your guarantor(s) or both. You warrant that you have authority of your directors and guarantor(s) to provide their details to us for the purposes of performing credit checks. You will supply complete, accurate information for the purposes of any credit check. We may refuse to provide Hardware or Services as the result of a credit check. If we refuse to supply Hardware or Services, we will refund the unused portion of any prepaid Fees.

5.2 Hardware Price. Where you purchase the Hardware from us, you will pay all our charges in relation to the Hardware Price. Hardware Price will be detailed in the Sales and Services Agreement. If any Hardware Price has not been detailed the charge will be at our standard retail recommended price for such Hardware, or at such rate as otherwise advised by us from time to time. Where you purchase the Hardware you will also be required to pay the Fees to access the Services.

5.3 Our Fees. You will pay all our Fees and Additional Fees in relation to installation of Hardware, renting the Hardware (if applicable) and accessing the Services. Fees will be detailed in the Sales and Services Agreement. If any Fees have not been detailed the charge will be at our standard price for such Hardware rental and Services access, or at such rate as otherwise advised by us from time to time. You will also pay Additional Fees as advised by us from time to time, for example travel costs in relation to installation of Hardware.

5.4 Commencement of Price and Fees. We may begin invoicing you monthly in advance once the Hardware or Services have been made available to you. We will issue the first invoice at the earlier of:

- (a) 30 days from the date that the first unit of Hardware is dispatched to you;
- (b) the date that the first Hardware unit is installed in a Vehicle; or
- (c) the date you first start accessing the Services.

5.5 Invoicing and payment. The first invoice will contain:

- (a) If you are purchasing the Hardware, the Hardware Price and the Fees for the following month's use of the Services; or
- (b) If you are renting the Hardware, the Fees for the following month's use of the Hardware and Services; and
- (c) Any Additional Fees.



Following the first invoice, we will continue to issue monthly invoices to you for the Fees and any Additional Fees. All invoices are payable within 14 days of the invoice being issued. You must pay the invoice in the manner specified in the invoice or as otherwise listed on the Website.

5.6 Disputed Charges. If you dispute any charges for Hardware Price, Fees or Additional Fees (**Charges**) in good faith, you must notify us within 2 months of the date of the relevant invoice. Should you fail to notify us of the dispute within this period you will not be entitled to dispute the Charge or make any claims against us in relation to the disputed Charge. Within 2 months of the relevant invoice, you may withhold payment of that Charge if you:

- (a) pay all undisputed Charges by the due date, or if no due date is specified within 14 days of the invoice date; and
- (b) co-operate with us to promptly resolve the disputed Charge.

If we agree there is a mistake, we will adjust your next invoice or, if appropriate, provide a refund. If we find, acting reasonably and in good faith, there is no mistake we will provide you with the reason for our decision and, if the due date for payment has already passed, you must pay the amount outstanding within 7 days.

5.7 Late payment. All Charges which are:

- (a) not subject to a genuine dispute but remain unpaid 14 days after the due date for payment; or
- (b) disputed under clause 5.6 but which we have determined do not contain an error that remain unpaid 7 days after the date of our notice to you under clause 5.6,

are subject to interest charged on a monthly basis from the due date for payment until the date on which you make payment in full to us at the Interest Rate plus 3% per annum or the maximum rate permitted by law if less. In addition to such interest, we may appoint an agent to collect any overdue Charges and pass your Data on for that purpose. You agree to pay any costs that are incurred by such agents in recovering the money you owe or in exercising any other rights, including recovery of commissions and legal costs on a solicitor and client basis. These remedies are without prejudice to any of EROAD's other remedies under the Agreement or otherwise.

5.8 Early Termination Fees. If you terminate the Agreement, cease renting the Hardware or stop accessing the Services during the Minimum Contract Term, then you must pay EROAD an Early Termination Fee for the Hardware and the associated Services. The Early Termination Fee is an amount equal to the total amount of Fees that would have been payable by you for the Hardware and the associated Services specified in the Agreement for the remainder of the Minimum Contract Term had the Agreement not been terminated or had you not ceased renting the Hardware or accessing the Services.

5.9 Changes to Fees. We will endeavour not to change the Fees during your Minimum Contract Term. However, if we do so, you can terminate this Agreement without paying Early Termination Fees within 30 days of us telling you of the change. After your Minimum Contract Term expires, and unless we both agree to another Minimum Contract Term (and the associated Fees), on at least one month's notice to you we can change the Fees you pay to our then standard casual rates. That notice may be provided to you at any time prior to the expiry of the relevant Minimum Contract Term (but will not take effect until the expiry date) or it may be provided at any time afterwards.

5.10 Set off. Any credits, allowances or other amounts payable or creditable by us to you will be subject to set off against any claims or other amounts owed by us to you.

5.11 GST.

- (a) If GST is payable on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply.
- (b) Unless otherwise stated, all amounts referred to in this Agreement, including the Fees, are stated on a GST exclusive basis.



- (c) If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- (d) In providing an invoice in accordance with clauses 5.4 and 5.5, a party shall provide proper tax invoices if GST is applicable to the Fees.
- (e) Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) shall have that meaning in this Agreement.

6. PROPERTY RIGHTS

6.1 Passing of risk. Unless otherwise agreed in writing between us, risk of any loss of, or damage to, Hardware will pass to you upon the earlier of delivery to your premises, or to a mutually acceptable third party's address, or receipt by you. If any Hardware is lost, stolen or damaged whilst in your Vehicles or on your premises you will pay the cost of repairing or replacing the Hardware, except where the loss, theft or damage was caused by us.

6.2 Title. You agree that where you purchase Hardware, ownership of such Hardware will pass to you on full payment of the Hardware Price. We will retain ownership of any Hardware you rent.

6.3 Personal Property Security Register. You:

- (a) acknowledge that these Terms constitute a security agreement for the purposes of section 20 of the Personal Properties Securities Act 2009;
- (b) acknowledge that a security interest exists in the Hardware supplied to you under these Terms; and
- (c) grant a security interest to EROAD in the Hardware rented by you under these Terms to secure payment of the Secured Money.
- (d) will provide all information and do all things that we may require to ensure that EROAD has a perfected security interest in respect of the Secured Money under the PPSA.
- (e) waive your right to receive a verification statement and a requirement for EROAD to keep the secured party informed of any change of name or address.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 EROAD Ownership. The Intellectual Property Rights in the Services, Applications, Website, Software and Hardware are owned by, or are licensed to, EROAD.

7.2 No Copying. You will not reproduce, translate, adapt, reverse engineer, make derivative works from or modify any component of or documentation relating to the Website, Applications, Hardware, Software or the Services.

7.3 Trade marks. You have no right to use EROAD's trade marks, unless you are granted in writing a limited, non-exclusive licence to reproduce EROAD's trade marks in marketing materials in accordance with EROAD's guidelines.

7.4 Data. You own the Data.

7.5 Infringement. EROAD will defend or settle, at EROAD's sole cost, any claim that the Hardware, Software, Applications, Website or Services infringe any other person's Intellectual Property Rights, provided that (1) EROAD has full control of the conduct of the defence or settlement; and (2) the claim does not arise from a breach by you of any of these Terms or the Agreement.

8. CUSTOMER INFORMATION

8.1 Your Data. During your relationship with us we may collect your Data. We may:

- (a) hold the Data and share it with our employees, Related Companies, other agents and service providers approved by us but only where this is necessary to enable us to offer or provide you



the Services, send you invoices, check that your responsibilities are being met, or otherwise to administer and enforce the Agreement;

- (b) be legally required to share Data with law enforcement agencies; and
- (c) share Data to the extent appropriate with credit reference and debt collection agencies.

8.2 Anonymous Information. Subject to any personally identifiable information having been removed, we may aggregate the Data with other data for EROAD's internal purposes, reporting industry-specific statistics and trends, or for sharing with third parties. We may receive consideration from third parties for such services.

8.3 Privacy Policy. We maintain a Privacy Policy that sets out the parties' obligations in respect of personal information and Data. We encourage you to read that policy at [Privacy Policy](#). The Privacy Policy forms part of the Agreement.

8.4 Confidentiality. We will:

- (a) keep the Data confidential until the Data is in the public domain through no fault of EROAD; and
- (b) not disclose or use or otherwise deal with the Data, except as permitted by these Terms, the Privacy Policy or as otherwise required by law.

8.5 Privacy. You:

- (a) must comply with EROAD's Privacy Policy, the Privacy Act (as though you were subject to the Privacy Act) and any additional Privacy Law by which you are bound;
- (b) must, both during and after the term of this Agreement:
 - (i) take all reasonable steps to ensure that Personal Information is protected against misuse and loss, or unauthorised use, access or disclosure, including by not disclosing any Personal Information to a third party without authorisation;
 - (ii) not do anything which may cause EROAD to breach any Privacy Law; and
 - (iii) if requested by EROAD, co-operate with EROAD to resolve any complaint or investigation under any Privacy Law, and provide other reasonable assistance.
- (c) acknowledge that EROAD may provide the services under this Agreement, from any locations, or through the use of contractors, worldwide; and
- (d) agree to provide any information, and to obtain any consents, relevant to its use of the EROAD's Hardware or Software, including those in relation to collection, use, disclosure and storage of Personal Information of any individual whose Personal Information may be included in the Customer's Data.

9. TERM AND TERMINATION

9.1 Term. Subject to clause 9.2:

- (a) where you have purchased the Hardware, you agree to acquire the Services for the Minimum Contract Term specified in the relevant Sales and Services Agreement; or
- (b) where you rent the Hardware, you agree to rent the Hardware and acquire the Services for the Minimum Contract Term specified in the relevant Sales and Services Agreement.
- (c) Once the Minimum Contract Term expires, this Agreement will continue on a month-to-month basis and the Fees may change in accordance with clause 5.9, unless we both agree to another Minimum Contract Term.

9.2 Termination by us. We may suspend, reduce or terminate the Services or rental of the Hardware:

- (a) if you materially breach these Terms or the Agreement and either (i) fail to remedy the breach within 10 days of receiving notice of the breach from us or (ii) the breach is not capable of being remedied; or
- (b) you become insolvent or makes an assignment for the benefit of creditors.

**9.3 Termination by you.** You may terminate this Agreement:

- (a) at any time by giving us 30 days' notice in writing. If you terminate the Agreement prior to the expiry of the Minimum Contract Term, you will be liable to pay Early Termination Fees as set out in clause 5.8; or
- (b) we become insolvent or make an assignment for the benefit of creditors.

9.4 Effect of termination. On termination of the Services or rental of the Hardware:

- (a) we will cease providing and you will cease using the Services;
- (b) you will remain liable for payment of all Hardware Prices, Fees and Additional Fees due at the time of termination and, if terminated during the Minimum Contract Term, the Early Termination Fee; and
- (c) if you rent the Hardware, be responsible for removing the Hardware and returning the Hardware to EROAD at your cost in good working order (fair wear and tear excepted) within 14 days of notifying EROAD of termination;
- (d) we will use commercially reasonable efforts to preserve your Data for six years. During that period, you may request, for a fee, extraction of your Data. We will use commercially reasonable efforts to extract the requested Data, but we disclaim any guarantee of availability or preservation of such Data.

10. WARRANTIES**10.1 Hardware Warranty.** We warrant that:

- (a) Hardware will be free from material defects (fair wear and tear excepted) for:
 - (i) one year from the Commencement Date, when you purchase the Hardware;
 - (ii) the life of the relevant rental term, when you rent the Hardware.
- (b) Subject to clause 4.1, we will install Hardware correctly when you use an EROAD Approved Installer. We will provide you with a one-year warranty on all installations EROAD Approved Installers undertake; and
- (c) For any accessories manufactured by us and supplied to you for the installation of the Hardware, we will provide a manufacturer's warranty against material defects (fair wear and tear excepted) for one year from the date of supply to you.

10.2 Warranty exclusions. The warranty in clause 10.1 will not apply if the Hardware has been:

- (a) improperly installed by any person that is not an EROAD Approved Installer;
- (b) altered by you or any other unauthorised person; or
- (c) subjected to abuse, misuse, neglect, or accident.

10.3 Services Warranty. We warrant that:

- (a) we have the authority to make Services available to you;
- (b) we will supply the Services using all reasonable care and skill and in a competent and professional manner;
- (c) the Services will meet the description set out in the product sheets on the Website; and
- (d) the Services will be available for use by you for no less than 97% of the time each month.

11. INDEMNITY AND LIABILITY

11.1 Warranties excluded. Except for the warranties, representations and commitments set out in this Agreement and any warranties that may not lawfully be excluded, EROAD expressly disclaims all representations, commitments and warranties (statutory, express or implied), including all warranties of merchantability, fitness for a particular purpose and accuracy of the Hardware and Services.

11.2 No liability. To the maximum extent permitted by law, neither party will be liable to the other in contract, tort (including negligence), under statute, or otherwise, for:

- (a) any breach of this Agreement to the extent that the breach is attributable to the default, negligence, misconduct or breach of the other party, its employees or agents; or



- (b) any loss of profits, revenue, or opportunities, or any indirect, special, punitive or consequential loss or damage, or for any loss of Data or information resulting, directly or indirectly, from any use of, or reliance on, the Hardware, Services, Software, Website or Applications.

11.3 Indemnity. To the extent permitted by law, you will indemnify EROAD from and against any direct and reasonable claims, damages, penalties, expenses or costs (including lawyer fees), arising from (1) your unauthorised use of or access to the Hardware, Software or Services; (2) your intentional breach of the Agreement or wilful omission by you or Authorised Users; (3) a third party claim that (i) our refusal to provide any person access to your Data, or (ii) our provision of Data to any person authorised by you to receive it, is in breach of the Privacy Act or any other relevant legislation; and (4) a third party claim that, due to your (or anyone for whom you are responsible) negligence or wilful misconduct, EROAD's Hardware caused bodily injury, death or physical damage to the property of any person.

11.4 Remedies. In the event that you make a warranty claim under clause 10.1 or 10.3, but subject to the exclusions set out in clause 10.2, your sole and exclusive remedies are as follows:

- (a) During the warranty period we will, at our sole discretion, repair or replace any defective Hardware or accessories. Where the Hardware is rented by you and is improperly installed by you, altered by you or any other unauthorised person, or is subjected to abuse, misuse, neglect, or accident, we may, at our discretion, repair or replace the Hardware and charge you the cost of repairing or replacing the Hardware.
- (b) In relation to the Services, we will use commercially reasonable endeavours to:
 - (i) ensure the Services meet the description of the Services set out in the product sheets on the Website; and
 - (ii) in respect of the loss of your Data, restore the most recent back up of your Data.

Your right to make a warranty claim in respect of any defect in, or failure of, any Hardware or Services (or any part of them) is conditional upon you promptly notifying us in writing of the defect or failure and giving us a reasonable opportunity to investigate and remedy any defect or failure relating to such Hardware or Services. We will not be liable under this clause, or obligated to perform any tasks under this clause 11.4, if the defect or failure cannot be verified or reproduced by us.

If we reasonably consider it necessary, we will travel to you for any Hardware warranty repair but we expect you to make your Vehicle available to us for such repair at an agreed time and in a convenient location. We may charge you Additional Fees for any travel costs in relation to a warranty repair if the distance travelled by us to your Vehicle exceeds 10 km.

11.5 Third party products or services. On your request, we may supply third party products or services to you or enable or assist you to access, use or purchase third party products or services. We make no representations or warranties, and have no liability or obligations whatsoever, in relation to the condition, fitness for purpose, performance, content or use of any such third party products or services, including where the product or service is supplied directly by us or our installers.

11.6 Liability limited. EROAD's liability (whether in contract, tort (including negligence) or otherwise) in respect of all claims for loss, damages or liability, including (but not limited to) claims in connection with this Agreement, will not in any circumstances whatsoever exceed:

- (a) in respect of Hardware, the liability specified in clause 10.4(a); and
- (b) in respect to Services (other than Hardware) an amount equal to the fees paid by you to us for the affected Services in the 12-month period immediately prior to the date liability first arose.

12. GENERAL

12.1 Notices. Any notice to be given under these Terms must be in writing and may be delivered personally or sent by email to the principal place of business of the intended recipient or to such other address (including email address) as may be notified by either party to the other from time to time. A notice by



email will be deemed to be received when transmitted to the correct email address of the recipient. Any other notice will be deemed to be received when left at the recipient's specified address or on the third day following posting.

- 12.2 No Assignment.** You may not assign any of your rights or obligations under these Terms to any person without our prior written consent. A change in your ownership or control is deemed to be an assignment or transfer of the Agreement.
- 12.3 Entire Agreement.** These Terms and the Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous agreements, understandings, negotiations, discussions, and commitments, whether written or oral.
- 12.4 Non-solicitation.** Each party acknowledges that, except as expressly set out in this Agreement, no representations and warranties about the subject matter of this Agreement have been made by or on behalf of the other party and that it has not relied on any representations or warranties about the subject matter of this Agreement given by or on behalf of the other party.
- 12.5 Change of Terms.** We may change these Terms at any time by any method we consider reasonable in the circumstances, including by publishing the updated Terms on the Website. We can change these Terms:
- (a) without telling you if we reasonably consider the change is likely to benefit you or have a neutral impact on you;
 - (b) by telling you at least 3 days beforehand if we reasonably consider the change is likely to have a minor detrimental impact on you (e.g. removal of a minor feature to your service); or
 - (c) by telling you at least 30 days beforehand if we reasonably consider that the change has more than a minor detrimental impact on you (e.g. removal of a key feature to your service). You can terminate this Agreement within 30 days of us telling you of such change and you will only incur the following fees and charges:
 - (i) fees incurred up to the termination date;
 - (ii) installation Fees; and
 - (iii) price for the Hardware we have provided to you that you have not paid us for, where you have chosen to purchase such Hardware.
- 12.6 Force majeure.** Notwithstanding anything to the contrary in this Agreement, neither party will be liable for any failure or delay in complying with any obligation under this Agreement (excluding any payment obligation) if:
- (a) the failure or delay arises directly from a Force Majeure Event;
 - (b) that party, on becoming aware of the Force Majeure Event, promptly notifies the other party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that party to mitigate or remedy the Force Majeure Event;
 - (c) that party uses its reasonable endeavours to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement;
 - (d) that party performs that party's obligations which are not affected by the Force Majeure Event; and
 - (e) performance of any obligation affected by a Force Majeure Event is resumed as soon as practicable after the end of the Force Majeure Event.
- 12.7 Australian Consumer Law.** Under the Australian Consumer Law, certain statutory guarantees ("Consumer Guarantee") are conferred in relation to the supply of goods or services if: (1) the price of the goods or services is 40,000 Australian dollars or less; or (2) the goods or services are of a kind ordinarily acquired for personal, domestic, or household use or consumption ("Personal Consumption Goods or Services"). The goods or services supplied under this Agreement are not Personal Consumption Goods or Services. If, however, the price of the goods or services is 40,000 Australian dollars or less, then EROAD limits its liability for breach of any Consumer Guarantee to (at EROAD's option): (1) in the case of goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced; and (2) in the case of services supplied under this Agreement, re-supplying the



services or the cost of having the services re-supplied, and the parties agree it is fair and reasonable in all the circumstances for the liability of EROAD to be so limited.

12.8 Contracting Out. Each party agrees that:

- (a) if EROAD determines that this Agreement (or a transaction in connection with it) is or creates a security interest for the purposes of the *Personal Property Securities Act 2009* (Cth) (PPSA), you agree to do anything EROAD reasonably asks (such as obtaining consents, producing, completing and signing documents) to ensure that the security interest is enforceable, perfected and otherwise effective with the intended priority:
- (b) to the extent the law permits:
 - (i) EROAD need not comply with, and you may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of; and
 - (ii) You waive your rights to receive any notice that is required by the PPSA (but this does not prohibit EROAD from giving such a notice); and
- (c) if EROAD exercises a right, power or remedy in connection with this document (or a transaction in connection with it), that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless EROAD states otherwise at the time of exercise (but this clause does not apply to a right, power or remedy which can only be exercised under the PPSA); and
- (d) for the purposes of any provision in this document restricting disclosure, disclosure under section 275 of the PPSA will only be regarded as required by law, to the extent that section 275 requires disclosure despite any agreement to the contrary.
- (e) You agree to pay or reimburse the reasonable costs and expenses of EROAD in connection with anything you are required to do under this clause.

12.9 Governing Law. These Terms are governed by the laws of New South Wales, Australia.

12.10 Survival. Clauses 7, 8.2, 8.4, 8.5, 9.4, 11, 12.6, 12.7, 12.8 and 12.9 will survive termination of the Agreement.

v 1.0 October 2018