



## EROAD's TERMS – New Zealand

### A. INTRODUCTION

EROAD provides Hardware and related Services and Applications 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. EROAD's electronic road user charging and off-road claims, EZfuel Report, Over Speed Reports, Fleet Activity) require you to have Hardware installed in your vehicles. In this instance, you may either:

- (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 (please note some Hardware may be available on a purchase option only).

Other Services (e.g. Driver Vehicle Inspection Reports, Electronic Logbooks) may be made available by EROAD to you and your drivers (for a Fee) for access on 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 12.6. 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, an End User Licence Agreement.

On signing a copy of the Sales and Services Agreement, or having Hardware installed in your Vehicle(s), 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 specific 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 return any Hardware or stop using the Services after the Commencement Date but before the end of the Minimum Contract Term, you can, but you must return the relevant rented Hardware and pay the associated Early Termination Fees. We explain this in more detail in clauses 5.12 and 5.13 below.
- (b) **Renewal** – unless communicated otherwise, at the end of the Minimum Contract Term specified in the Sales and Services Agreement, the Agreement will automatically renew for successive 12-month periods. Each Renewal Term is treated as a new Minimum Contract Term. We explain this in more detail at clause 9.1(c) below.
- (c) **Privacy** – EROAD cares about your privacy and the privacy of your drivers. 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 personal information, please read our [Privacy Policy](#).
- (d) **Hardware is not transferable** – this Agreement is between you and us. If you sell or otherwise dispose of your Vehicle(s) you will still be responsible for meeting your obligations under this Agreement for the Hardware unit(s) (and the associated Services) installed in the sold or otherwise disposed of Vehicle(s), unless we agree otherwise in writing. This means that you (not the new Vehicle owner) are responsible for continuing to pay us any applicable Fees, Hardware Price, Additional Fees and Early Termination Fees.



## D. TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions. In these Terms:

**Accessory** means any accessory supplied by EROAD to the Customer during the term of the Agreement for use with the Hardware or Services.

**Accessory Price** means, where applicable, the price for the purchase of any Accessories, as set out in any Purchase Order or as otherwise described by us.

**Additional Fees** means the ancillary fees for the provision of Hardware, Accessories and Services including, but not limited to, Hardware and Accessory installation and deinstallation fees and travel costs, refurbishment fees, credit card convenience fees, dishonour fees and fees for any Accessories necessary for the installation of Hardware.

**Affiliates** means any legal entity or other business organisation anywhere in the world in which EROAD's main holding company, EROAD Limited, holds a twenty-five per cent or higher equity interest whether directly or indirectly, and whether the interest is shares, debentures or otherwise, voting or non-voting.

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

**Alleged Breach** has the meaning described in clause 4.9.

**Application** means any software program developed or made available by EROAD, or a Third Party Provider, for download by the Customer or its drivers for use on a portable smart device.

**Authorised User** means any person (including any employee, agent or contractor of the Customer):

- (a) given access to the Services by the Customer; or
- (b) to whom the Customer wishes to give access to Data and;
- (c) from or about whom Data is collected for the purpose of these Terms.

**Bank Instrument** means a commitment in writing issued by a reputable bank to pay a particular sum of money to EROAD on behalf of the Customer on demand by EROAD.

**Bond** means, where required by EROAD, an amount equal to the combined first six months' Fees.

**Charges** has the meaning given in clause 5.10.

**Commencement Date** means the earlier of the date that the:

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

**CPI** means the consumer price index annual inflation rate, or such amended or replacement index, as published quarterly by Statistics New Zealand.

**Data** means all information:

- (a) inputted into the Services by the Customer;
- (b) automatically generated or collected by:
  - (i) an Application or a Website used by the Customer, its drivers, Authorised Users or anyone else for whom the Customer is responsible; or
  - (ii) the Hardware which has been installed into the Customer's Vehicle; or



- (c) that the Customer supplies, or consents to a third party supplying, to EROAD; and includes Personal Information.

**Early Termination Fee** has the meaning given in clause 5.123.

**End User Licence Agreement** means an agreement that applies where the Customer, or the Customer's employee, agent or contractor, or EROAD on behalf of the Customer, downloads or uses Third Party Provider's Application, Website, Software or Services.

**EROAD/ we/ our/ us** means EROAD Limited of 260 Oteha Valley Road, Albany, New Zealand.

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

**Fees** means:

- (a) where the Customer is renting the Hardware, the bundled fees charged by EROAD to the Customer for renting the Hardware and accessing the Services;
- (b) where the Customer has purchased the Hardware by paying the Hardware Price, the fees charged by EROAD to the Customer for accessing the Services; or
- (c) where the Customer is only accessing Services but not acquiring EROAD supplied Hardware (for example, where the Customer is accessing Services through hardware acquired from a third party), 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 or an authorised agent, and includes Additional Fees.

**Force Majeure Event** means an act of God, strike, lockout, war (declared or undeclared), blockade, act of a 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 *Goods and Services Tax Act 1985* as amended or replaced from time to time, and any associated legislation and regulations to the extent they relate to the taxation of goods and services in New Zealand.

**Guarantee** means a guarantee signed by the 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 the Customer during the term of the Agreement for use with the Services, including hardware that is sold, rented or loaned to the Customer or is installed in the Customer's Vehicle(s), and includes hardware manufactured by a Third Party Provider.

**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 Bank of New Zealand business overdraft base interest plus 3% per annum, calculated on a daily basis. If for any reason this interest rate exceeds the maximum interest rate permitted by law, then the interest rate shall be the maximum rate that is permitted by law.

**Minimum Contract Term** means the minimum number of months, either:

- (a) specified in the Sales and Services Agreement; or
  - (b) as part of any Renewal Term,
- during which the Customer must either:
- (c) continue to acquire each unit of Hardware and the associated Services, or
  - (d) continue to acquire stand-alone Services (if the Customer is purchasing or not acquiring Hardware).

**Newly Created Intellectual Property rights** means any and all Intellectual Property Rights created as a result of or in connection with the provision of our Services, Applications, Website, Software and Hardware, which may include the provision of associated documentation (including, but not limited to: instructions, information, plans or diagrams).

**Organisation** means the New Zealand Transport Authority, a territorial, state or government entity, or a private entity, responsible for collecting, or enforcing the collection of highway, fuel, RUC or similar taxes, levies, fees or any other charges or tolls.

**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 2020*, 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.

**Renewal Term** has the meaning given in clause 9.1(c).

**Road User Charges Act** means the Road User Charges Act 2012 as amended or replaced from time to time.

**RUC** means road user charges, as that term is defined in the Road User Charges Act.

**RUC Licence** means a distance licence or an additional licence issued for a RUC vehicle under the Road User Charges Act.

**RUC Payment Service** has the meaning given in clause 5.8.

**Sales and Services Agreement** means each quote signed by you, 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 Property** has the meaning given in clause 6.3.

**Services** means the services provided by or purchased from EROAD and accessed by Customer via the Applications, Website or Hardware and includes services made available by a Third Party Provider.



**Software** means any software embedded in 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 set out in clauses 1 to 12.

**the Customer/you/your** means the EROAD customer identified in the Agreement.

**Third Party Provider** means any third party that is a manufacturer, supplier or owner of the Intellectual Property rights in the Hardware, Software, Applications, Website or Services and that EROAD has a supply arrangement with.

**Usage Charge** means Fees you incur for certain Hardware and Services based on your actual use of the Hardware or Service within a billing period rather than on a fixed recurring basis. This does not include Hardware and Services that are billed monthly in advance (unless otherwise agreed) for which Fees apply regardless of actual usage or activity within the billing period. All applicable Usage Charges for Hardware and Services must be specified in the relevant Sales and Services Agreement.

**Vehicle** means a vehicle, mobile machinery or equipment owned, leased or under the control of the Customer into which the Hardware and Accessories are, or will be, installed.

**Website** means any website operated by EROAD or by a Third Party Provider.

#### **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;
- (d) a word derived from a defined term has a meaning that corresponds with that defined term; and
- (e) reference to the "term of the Agreement" or the "term of this Agreement", includes the Minimum Contract Term and any Renewal Term.

**1.3 Precedence.** In the event of conflict or inconsistency between any parts of the Agreement, then, to the extent of the conflict or inconsistency, unless agreed in writing elsewhere, the following order of precedence shall apply (in descending order of priority):

- (i) these Terms;
- (ii) an End User Licence Agreement; and
- (iii) a Sales and Services Agreement.

## **2. EROAD's RESPONSIBILITIES**

**2.1 Hardware.** Subject to you meeting your obligations under the Agreement, when we provide Hardware to you, we provide warranties in accordance with clause 10.1.

**2.2 Services.** Subject to clause 5.1, we will supply Services to you solely for your own internal business use during the term of this Agreement. We also make the following commitments to you:

- (a) We will provide Services to you 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 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.

**2.3 Customer Support.** We provide a number of self-service customer support channels which are detailed on the Website. You agree to use these self-service customer support channels as a way of initially diagnosing and resolving concerns you 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.

**2.4 Changes to Hardware, Accessories and Services.** EROAD reserves the right to make changes to the Hardware, Accessories and/or Services without notice and without incurring any obligation to you, provided that any such change does not, in our reasonable opinion, materially diminish the functionality of the Hardware, Accessories and/or Services, as applicable.

### **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 Failsafe Performance.** You acknowledge and agree that the Hardware, Accessories and Services may not be fault tolerant and are not designed, manufactured or intended for use or resale as, or in, online control equipment in hazardous environments and/or requiring failsafe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure thereof could lead directly to death, personal injury, or severe physical or environmental damage.

**3.4 No Third-Party Relationships.** You acknowledge and agree that you are not a third-party beneficiary of any agreement between EROAD and the Wireless Carrier (or, where applicable, an agreement between a Third Party Provider 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. THE CUSTOMER'S RESPONSIBILITIES**

**4.1 Installation of Hardware.** You agree to be responsible for the proper installation of all Hardware and Accessories according to our instructions and specifications. You may elect to either use an EROAD Approved Installer or, where the Hardware is not being used as an Electronic Distance Recorder, to self-install Hardware and Accessories. Where you elect to self-install Hardware and Accessories you agree that you are doing so at your own risk and you will ensure the Hardware and Accessories (including the speed sensor where applicable) are properly and safely installed in the Vehicle(s) and is 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 undertaken by someone other than an EROAD Approved Installer. Hardware and Accessory installation may require necessary modifications (including drilling screw holes and rewiring) to your Vehicle(s). We will not be responsible for any damage caused to any Vehicle and will not be required to restore any Vehicle to its pre-installation condition if the Hardware and Accessories are removed.

**4.2 Registration of Hardware.** On completion of the installation of Hardware, where the Hardware is being used as an Electronic Distance Recorder, you will register the Hardware with the Organisation and, where necessary, remove any other hubodometer from the Vehicle.

**4.3 Care of Hardware.** You agree to look after all Hardware and Accessories and to pay for any repair or replacement if it is: (i) damaged while in your possession or control; or (ii) you do not return it to us at the expiry of the Minimum Contract Term or Renewal Term (as applicable), or upon termination. However, you will not be liable for fair wear and tear or damage caused by us or anyone acting on our behalf. You are required 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) where we provide you with an EROAD Approved installer and you do not make your Vehicle(s) available at the agreed time in location (as described in cl4.3(b) above), you will be liable to pay a fee equal to the cost of installation of those Vehicle(s).
- (d) keep the Hardware and Accessories installed in the Vehicle(s) in which they were first installed (where the Hardware and Accessories were supplied for the purposes of an installation in a Vehicle) and not transfer the possession of the Hardware and/or Accessories (including by transferring the Hardware and Accessories to another Vehicle without our prior written approval;
- (e) on request, make the Hardware and Accessories available to EROAD or a Third Party Provider for inspection, repair and replacement;
- (f) not alter, repair or recalibrate the Hardware or Accessories;
- (g) protect Hardware and Accessories from water, fire, vermin, insect infestation, theft and any other risks of loss or damage. You agree to insure the Hardware and Accessories against theft, loss, damage or accidents to its full replacement value; and
- (h) notify us immediately of any loss, theft or damage to Hardware or Accessories.

**4.4 Proper Use.** You will:

- (a) use the Hardware, Accessories, 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, Accessories or Software;
- (c) not use the Hardware, Accessories, 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 or, where applicable, a Third Party Provider;
- (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, Accessories or Website; and
- (i) be responsible for Authorised Users' use (or the use by anyone else you are responsible for) of the Hardware, Accessories, Software, Application, Website and Services and ensure Authorised Users abide strictly with all applicable laws.

**4.5 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 Users' passwords, unauthorised possession of or access to the Hardware or Services or any other breach of security;
- (c) not knowingly allow the Hardware, Accessories, 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, Accessories, Services and Applications, whether authorised by you or not;
- (e) be responsible for granting proper authorisation to Authorised Users; and
- (f) be solely responsible for everything that Authorised Users do when using the Services or Hardware and Accessories.

**4.6 Compliance.** 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 and Accessories, operation of the Vehicle and codes of safe driving, use of the Hardware, Accessories and Services, and any privacy and disclosure laws. You acknowledge and agree that:

- (a) 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; and
- (b) you will be solely responsible for paying RUC for your Vehicle(s) and displaying current RUC Licences while operating on public roads.

**4.7 Consents.** You are solely responsible for obtaining all necessary informed consents from Authorised Users and any other person who accesses or uses the Hardware, Accessories and Services for EROAD's collection, storage, use and sharing of Data in accordance with these Terms and the Privacy Policy.**4.8 End User Licence Agreements.** Where we activate, download, install, set up and/or configure a Third Party Provider's Application, Website, Software or Services onto Hardware provided to you pursuant to this Agreement, you authorise EROAD to accept the associated EULA on your behalf.**4.9 Alleged Breaches.** If you consider that we have breached: any of these Terms, or the terms of any Service Order or agreement we have with you ("Alleged Breach"), then (whether or not the Alleged Breach is also a material breach):

- (a) you will, within 7 working days of the Alleged Breach, advise EROAD in writing of circumstances you consider amounts to a breach; and
- (b) we shall have 20 working days to investigate and determine whether a breach has occurred. If we, acting reasonably, determine the Alleged Breach is a breach of the relevant terms, we will advise you in writing our proposed solution to rectify that breach; and
- (c) if you do not accept our proposed solution, you will advise us in writing of the reasons you do not agree to the proposed solution and provide us with your written proposed alternative solutions for discussion with us; and
- (d) no Alleged Breach by us shall be determined to be a breach other than in accordance with this clause; and



- (e) any right you have to impose any penalty or to terminate any agreement with us due to any breach or material breach will not apply if you have not followed the steps you are required to follow as set out in this clause 4.9 in respect of any Alleged Breach.

## **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 or a Bank Instrument as security for paying future charges or pay a Bond. 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, Accessories or Services as the result of a negative credit history. If we refuse to supply Hardware, Accessories or Services, we will refund the unused portion of any prepaid Fees.

**5.2 Bond or Bank Instrument.** Where we require you to pay a Bond or provide a Bank Instrument, the Bond or Bank Instrument must be paid or provided (as applicable) to EROAD within 7 days of the request. Payment of the Bond or provision of the Bank Instrument does not discharge your obligation to pay the Hardware Price, if applicable, and Fees that are due. EROAD may draw down on the Bond or make a demand under the Bank Instrument at any stage for any breach of the Agreement, including where you fail or refuse to pay the Fees, your RUC obligation, or you damage the Hardware or Accessories. Failure to pay the Bond or provide the Bank Instrument when requested by EROAD is a material breach of the Agreement.

**5.3 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 and any Accessories you will also be required to pay the Fees to access the Services, the Accessory Price and Additional Fees, such as freight charges.

**5.4 Our Fees.** You will pay all our Fees and Additional Fees in relation to installation of Hardware and Accessories, renting the Hardware (if applicable) and accessing the Services (including, where applicable, the RUC Payment 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 or repair of Hardware and freight charges.

**5.5 Reimbursement.** You will reimburse us for any costs incurred by us in providing support services where we determine that those support services do not form part of the Services, including, but not limited to, in relation to any third-party product or Hardware or Accessory and/or Services provided to you as part of a pilot.

**5.6 Commencement of Invoicing and Minimum Contract Term.** We may begin invoicing you for Additional Fees (such as account activation and installation fees) on and from the Commencement Date.

The Minimum Contract Term and invoicing will commence for the Hardware, Accessories and Services at the earlier of:

- (a) 1st of the month 30 days after 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 Services are first made available to you.

**5.7 Invoicing and Payment.** Invoices will contain:

- (a) if you are purchasing the Hardware, the Hardware Price (on the first invoice) and the Fees for the use of the Services; or
- (b) if you are renting the Hardware, the Fees for the use of the Hardware and Services;
- (c) if you are purchasing standalone Services, the Fees for the Services; and
- (d) any Additional Fees.

We will issue invoices monthly in advance unless otherwise agreed in writing. If there are any Services where Usage Charges apply, we will invoice these monthly in arrears. 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 outlined on the Website.

**5.8 RUC Obligations.** You may choose to purchase RUC Licences through EROAD by using EROAD's payment gateway (the **RUC Payment Service**). In this case, the cost of RUC Licences will be additional to the Fees, Hardware Price, Accessory Price and Additional Fees. You agree to reimburse EROAD for any expenses incurred by us in respect of your failure to meet your RUC obligations, including paying for your RUC Licences. If you fail to meet your RUC obligations, we reserve the right to change your RUC Licence payment method, cancel the RUC Payment Service or terminate this Agreement immediately on written notice.

**5.9 RUC Payment Service.** Subject to clause 5.8, where you choose to use the RUC Payment Service you:

- (a) authorise EROAD to withdraw from your designated account at the required times, or to charge the credit card supplied by you to EROAD, the appropriate amounts for the RUC Licence;
- (b) authorise EROAD to obtain your RUC Licence data from the relevant Organisation;
- (c) will provide accurate bank account or credit card information to EROAD to allow us to process the transaction for the RUC Licences;
- (d) will maintain active and accurate payment authorisations with EROAD;
- (e) will maintain sufficient funds in your designated account to cover your RUC obligations; and
- (f) will be responsible for, and pay, any penalties or interest to the Organisation (or EROAD, if charged to EROAD in respect of the Customer) related to any improper document filing, payment shortage, or late payment.

**5.10 Disputed Charges.** If you wish to dispute in good faith any item or part of an item in a tax invoice issued by EROAD (**Charges**), you must notify us, specifying the Charges disputed and the grounds for the dispute. You may withhold payment of a disputed 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 in writing and, if the due date for payment has already passed, you must pay the amount outstanding within 7 days of us issuing the decision.

**5.11 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 5.10, but which we have determined do not contain an error, that remains unpaid 7 days after the date of our notice to you under clause 5.10,

are subject to interest charged at the Interest Rate on a monthly basis from the due date for payment until the date on which you make payment in full to us. In addition to such interest, we may appoint an agent to collect any overdue Charges. You agree to pay any costs that are incurred by such agents any by us 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. If you fail to pay any undisputed Charges 30 days after the due



date for payment, you will be in material breach of this Agreement. These remedies are without prejudice to any of EROAD's other remedies under the Agreement or otherwise.

- 5.12 Recovery of Hardware Price.** Where you rent the Hardware from us and clause 5.11 applies and we appoint an agent to collect any overdue Charges, we may (in our sole discretion): charge you for the full Hardware Price instead of the ongoing rental fee for the Hardware. When this applies, the Hardware Price will be added to any overdue Charges owed by you.
- 5.13 Early Termination Fees.** If the Agreement is terminated, or you cease renting the Hardware or stop accessing the Services, on or after the Commencement Date but before the conclusion of 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 Sales and Services 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.
- 5.14 Changes to Fees.** Subject to clause 5.15, we may change the Fees that you must pay by notice in writing to you. However, if we do so, within 30 days of us telling you of the change, you can terminate this Agreement in accordance with clause 9.3 without paying Early Termination Fees. However, at least one month prior to the expiry of your Minimum Contract Term or the applicable Renewal Term, we may give notice that, on and from the commencement date of the subsequent Renewal Term, the Fees will change to our then standard casual rates. Unless you give us notice in accordance with clause 9.1(c), you will be liable to pay such Fees for the duration of the subsequent Renewal Term.
- 5.15 Annual Fee Review.** Notwithstanding clause 5.14, by giving at least 30 days' notice, EROAD may increase the Fees once per annum (but not during the first 12 month period after the Commencement Date), provided that the percentage increase of any such increase does not exceed the greater of either: (i) a five percent increase, or (ii) the percentage increase in the CPI, both to be calculated by reference to the period from the date of the last such increase, or in the case of the first increase, the period from the Commencement Date. If you terminate this Agreement in response to EROAD increasing Fees in accordance with this clause, you will be liable for Early Termination Fees as described in clause 5.13.
- 5.16 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 you to us.
- 5.17 Upgrades.** If you request to purchase or rent additional Hardware, Accessories or Services, or require us to provide you with new Hardware, Accessories or Services released or developed by us, you must complete a new Sales and Services Agreement or order and additional charges and a Minimum Contract Term will apply. We may charge reasonable fees in respect of the installation and ongoing Fees for upgraded Hardware, Accessories and/or Services.
- 5.18 Most Favoured Nations.** If any agreement we enter into with you includes a "most favoured nations" clause: when comparing Fees, Additional Fees or charges to determine whether they are higher, lower or equal, we will take into consideration all: fees (including Early Termination Fees); charges; penalties; the fixed term agreed to, and/or other relevant considerations so a meaningful comparison can be made. For the avoidance of doubt, lower pricing may be less favourable than higher pricing, such as when increased/additional obligations are imposed on the party subject to the lower pricing. For example: where the fixed term is greater, or other: fees (including Early Termination Fees); charges penalties or other considerations impose increased obligation on the party subject to the lower pricing.
- 5.19 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 5.6 and 5.7, a party shall provide proper tax invoices if GST is applicable to the Fees.

## **6. PROPERTY RIGHTS**

**6.1 Passing of Risk.** Unless otherwise agreed in writing between us, risk of any loss of, or damage to, Hardware or Accessories 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 or Accessories are lost, stolen or damaged whilst in your Vehicle(s) or whilst in your control you will pay the cost of repairing or replacing the Hardware and Accessories, except where the loss, theft or damage was caused by us.

**6.2 Title.** You agree that:

- (a) 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.
- (b) Where we purchase a RUC Licence on your behalf, we will retain ownership of such RUC Licence until you reimburse us the RUC Licence fees in full. If you fail to reimburse us when demanded, we may, without liability, surrender the RUC Licence to the Organisation for a refund.

**6.3 Personal Property Security Register.** You:

- (a) acknowledge that these Terms constitute a security agreement for the purposes of sections 16 and 36 of the Personal Properties Securities Act 1999;
- (b) acknowledge that a security interest exists in the Hardware and RUC Licences supplied to you under these Terms;
- (c) grant a security interest to EROAD in the Hardware rented by you, the first RUC Licence and all future RUC Licences supplied to you under these Terms in respect of all Vehicles (the **Secured Property**);
- (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 Property under the PPSA; and
- (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, Hardware and Accessories are owned by, or are licensed to, EROAD. Subject to clause 7.2, any Newly Created Intellectual Property Rights as defined in this Agreement are owned by us, unless specified otherwise in this Agreement.

**7.2 Newly Created Intellectual Property Rights.** In the event that the parties agree in writing that Newly Created Intellectual Property Rights (or any portion of Newly Created Intellectual Property Rights) will be retained by you, this shall only apply to the extent that:

- (a) You have engaged us specifically to develop or create the particular Newly Created Intellectual Property Right: and
- (b) the development or creation of the particular Newly Created Intellectual Property Right has been specifically commissioned by you; and
- (c) Clear parameters have been described in a separate written agreement executed by both/all parties specifically for that purpose; and
- (d) You have fully paid all agreed costs and fees set out in the written agreement described in clause 7.2(c) above; and
- (e) No other Intellectual Property Rights shall be retained by you; and
- (f) Your retention of the specific Newly Created Intellectual Property Right/s does not impact our ability to utilise any other Newly Created Intellectual Property Rights for our benefit, including in relation to our other customers; and



- (g) You grant us a perpetual, irrevocable, world-wide, exclusive, royalty-free, sublicensable and transferable license to use, reproduce, modify, adapt, publish, distribute, perform, display, commercialise, and otherwise exploit such Newly Created Intellectual Property Right/s in connection with our business, including incorporation into our products and services for the benefit of our other customers and third parties; and
- (h) Your retention of the Newly Created Intellectual Property Rights does not affect EROAD's rights in relation to the existing Intellectual Property Rights, which will continue to fully remain EROAD's property.

**7.3 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, Accessories, Software or the Services.

**7.4 Trademarks.** You have no right to use EROAD's trademarks, unless you are granted in writing a limited, non-exclusive licence to reproduce EROAD's trademarks in marketing materials in accordance with EROAD's guidelines.

**7.5 Infringement.** EROAD will defend or settle, at EROAD's sole cost, any claim that the Hardware, Accessories, 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. DATA, CONFIDENTIALITY AND PRIVACY**

**8.1 Data.** During your relationship with us we, or a Third Party Provider, may collect, create and generate Data. During the term of this Agreement and subject to you meeting your obligations under this Agreement, we authorise you to access Data made available through the Services. We will use reasonable commercial endeavours to maintain a back-up of Data.

**8.2 Use and Disclosure of Data.** We may:

- (a) hold the Data and share it with our employees, Affiliates, other agents and service providers approved by us but only to the extent 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;
- (c) share Data to the extent appropriate with credit reference and debt collection agencies;
- (d) obtain carrier, vehicle, and transportation permit information from Organisations, and to file reports with, and provide Data to, the Organisations on your behalf in connection with EROAD providing the Services;
- (e) use, copy, modify, store, disclose and communicate the Data to the extent necessary to enable you to use the Services;
- (f) disclose Data to third parties where you access, use or purchase third party products or services in connection with the Hardware or Services; and
- (g) disclose Data relating to your RUC Licence and the distance travelled as recorded, and stated, on the Hardware to Organisations to assist you to comply with the Road User Charges Act.

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

**8.4 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.

**8.5 Confidentiality.**

- (a) We will:
  - (i) keep the Data confidential until the Data is in the public domain through no fault of EROAD; and
  - (ii) 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.
- (b) You will, at all times:
  - (i) keep all terms, pricing and details of any agreement between us confidential; and
  - (ii) keep all commercially sensitive information we disclose to you for any reason confidential, including, but not limited to, in relation to: any tender or offer by us to supply you with the Hardware, Accessories, and Services, or any information or documents uploaded by us onto any Application or online platform, and

your obligation to keep such information confidential continues after termination or completion of any agreement between us.

**8.6 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 the 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 the 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 Data.

**9. TERM AND TERMINATION****9.1 Term and Renewal.** Subject to clauses 9.2 and 9.3:

- (a) where you have purchased the Hardware, you agree to acquire the Services specified in the Sales and Services Agreement from the Commencement Date until expiry of the Minimum Contract Term; or
- (b) where you rent the Hardware, you agree to rent the Hardware and acquire the Services specified in the Sales and Services Agreement from the Commencement Date until expiry of the Minimum Contract Term.
- (c) Once the Minimum Contract Term expires, this Agreement will automatically renew for successive 12 months periods (each a **Renewal Term**), unless, at least 30 days prior to the end of the Minimum Contract Term or current Renewal Term, either party gives the other written notice of intention not to renew the Agreement. Fees may change in the Renewal Term in accordance with clause 5.14.

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

- (a) you breach 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;
- (b) you become insolvent or makes an assignment for the benefit of creditors;
- (c) we refuse to provide Hardware or Services to you pursuant to clause 5.1; or
- (d) we are no longer able to provide the Services as a result of a loss of any relevant and necessary certification; or



- (e) at any time by giving you 60 days' notice in writing. If we suspend, reduce or terminate the Agreement in accordance with this clause 9.2(e) prior to the expiry of the Minimum Contract Term, you will not be liable to pay Early Termination Fees, unless you have materially breached this Agreement.

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

- (a) at any time by giving us 30 days' notice in writing. Except for our material breach, 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 5.12; or
- (b) in the event we become insolvent or make an assignment for the benefit of creditors.

**9.4 Termination of RUC Payment Service.** You may discontinue the RUC Payment Service at any time by notifying us in writing. We may terminate the RUC Payment Service:

- (a) on 30 days' written notice to you for any reason; or
- (b) immediately on written notice to you in the event that you breach any of your obligations under this Agreement.

**9.5 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, Accessory Prices, Fees and RUC Licences due at the time of termination and, subject to clauses 9.2(e) and 9.3(a), if terminated during the Minimum Contract Term, the Early Termination Fee;
- (c) if you rent the Hardware, you will 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. Subject to clause 5.12, you will be liable for our fees for the rental of Hardware and billing for Hardware Fees will continue until the *later* of: (i) the expiry of the Minimum Contract Term or Renewal Term (if applicable); or (ii) Hardware being returned to us in good condition and being received by EROAD; and
- (d) we will, subject to any applicable laws, store Data for as long as necessary to fulfil the purpose(s) for which it was collected, including to support our products and services we offer, resolve disputes, establish legal defences, conduct audits, pursue our legitimate business purposes, enforce our agreements and comply with applicable law. Provided the data is available, you may request, for a fee, extraction of 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 manufactured by us will be free from material defects (fair wear and tear excepted) for:
  - (i) one year from the Commencement Date, when you purchase the Hardware; and
  - (ii) the duration of the Minimum Contract Term, when you rent the Hardware.
- (b) subject to clause 4.1, we will provide you with a one-year warranty (from the date of completion of installation) on all installations EROAD Approved Installers undertake; and
- (c) for any Accessories supplied by us to you for the installation of the Hardware, we will provide a warranty against material defects (fair wear and tear excepted) for one year from the date of supply to you.

**10.2 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 relevant Website; and
- (d) the Services will be available for use by you for no less than 97% of the time each month.

**10.3 Warranty Exclusions.** The warranty in clauses 10.1 and 10.2 will not apply if:

- (a) the Hardware or Accessories have been improperly installed by any person that is not an EROAD Approved Installer;



- (b) the Hardware or Accessories have been altered by you or any other unauthorised person;
- (c) the Hardware or Accessories have been subjected to abuse, misuse, neglect, or accident; or
- (d) you are in breach of clause 4.4.

**10.4 Third Party Provider Warranties.** We will also pass on the full benefit of any warranty you are eligible for in respect of Hardware, Accessories and Services manufactured or supplied by a Third Party Provider but purchased from us.

## **11. INDEMNITY AND LIABILITY**

**11.1 Other Warranties Excluded.** All of our products and services are provided “as is”. 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, accuracy of the Hardware, Accessories, Services or Applications, non-infringement and against hidden defects.

**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, Accessories, 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 on a solicitor client basis), arising from (1) your unauthorised use of or access to the Hardware, Accessories, Software or Services; (2) your intentional breach of the Agreement or wilful omission by you or Authorised Users; (3) a third party claim: (i) relating to our refusal to provide any person access to Data; or that we have breached any applicable Privacy Laws which is due to your failure to comply with these Terms; and (4) a third party claim that, due to your (or anyone for whom you are responsible) negligence or wilful misconduct or unauthorised use of Hardware or Accessories, EROAD’s Hardware or Accessories 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 10.2, but subject to the exclusions set out in clause 10.3, 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/or Accessories and charge you the cost of repairing or replacing the Hardware and/or Accessories.
- (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 Data, restore the most recent back up of Data.

Your right to make a warranty claim in respect of any defect in, or failure of, any Hardware, Accessories, 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, Accessories, 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 or Accessory warranty repair or replacement, but we expect you to make your Vehicle available to us for such repair or replacement 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 or replacement if the distance travelled by us to your Vehicle exceeds 10 km.



**11.5 Third party products or services.** We may agree to supply third party products or services to you or enable or assist you to access, use or purchase third party products or services (including Third Party Provider Hardware or Services). Subject to clause 10.4, 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 to Fees.** If, despite clauses 11.2 to 11.5, we are found liable to you for any loss or damage, that liability will not exceed:

- (a) for any claim or claims relating to Hardware purchased by the Customer, the Hardware Price or the cost of repair or replacement of the Hardware or the defective components (whichever is least); and
- (b) for any claim or claims relating to Hardware rented by the Customer and/or Services, the Fees actually paid by you to us for the affected Hardware and/or Services in the 12-month period immediately prior to the date liability first arose; and
- (c) for any claim or claims relating to Accessories purchased by the Customer, the Accessory Price or the cost of repair or replacement of the Accessories or the defective components (whichever is least).

## **12. GENERAL**

**12.1 Notices.** Any notice to be given under the Agreement 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 the Agreement 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 No Agency.** Nothing in these Terms will be deemed to constitute either party as the agent, partner or joint venture of the other.

**12.4 Entire Agreement.** 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.<sup>1</sup>

**12.5 No Representation.** 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.

**12.6 Change of Terms.** If your Agreement with us meets the definition of a 'small trade contract' under the Fair Trading Act 1986, 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.

In all other circumstances, we may change these Terms at any time by publishing the updated Terms on the Website. Your continued use of the Services will constitute acceptance of the amended Terms.

**12.7 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:

- the failure or delay arises directly from a Force Majeure Event; and
- (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; and
- (c) that party uses its reasonable endeavours to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement; and
- (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. However, in event of a Force Majeure Event that persists for ninety (90) days or more, then either party may terminate this Agreement upon written notice to the other party.

**12.8 Contracting Out.** To the extent permitted by law, where the Hardware, Accessories and Services are acquired in trade by the Customer, being a customer who is in trade, EROAD and the Customer agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986 and the Consumer Guarantees Act 1993 and the parties agree that it is fair and reasonable that they be bound by this clause. Further, to the extent permitted by law, EROAD and the Customer agree to contract out of sections, 114(1)(a), 120(2), 121, 125, 126, 129 and 131 of the Personal Property Securities Act 1999.

**12.9 Governing Law.** These Terms and the Agreement are governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand courts.

**12.10 Survival.** Clauses 5.11, 5.12, 5.13, 5.16, 7, 8.2, 8.3, 8.4, 8.5, 8.6, 9.5, 11, 12.7, 12.8, 12.9 and 12.10 will survive termination of the Agreement.