



EROAD's TERMS

EROAD provides hardware, web-applications and related services (including for use with its products) for the purpose of providing tax management, compliance and commercial services.

These Terms explain EROAD's obligations in the provision of the Hardware and Services and your obligations as EROAD's Customer.

On signing a copy of the Agreement, or having Hardware installed in your vehicle, or by accessing the Services, you accept and agree to be bound by these Terms. EROAD recommends that you carefully read these Terms prior to using its Hardware and Services.

Please note that 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. Most Customers rent the Hardware and access Services in a bundle from EROAD for a monthly fee. There is also an option to purchase the Hardware and pay EROAD a monthly fee to access the Service. 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. Where an employee, agent or contractor of a Customer downloads an Application, that employee, agent or contractor and the Customer will be bound by the terms of the End User Licence Agreement for the Application and these Terms.

EROAD cares about keeping Customers' data safe. EROAD has a Privacy Policy which details what data it collects from Customers, how it uses the data and how Customers can contact EROAD in relation to the Policy. It is available to be read here: www.eroad.co.nz/nz/privacy-policy.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. In these Terms:

Agreement means the Sales and Service Agreement.

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.

Bond means an amount equal to the combined first six months' Fees for using the Services.

Commencement Date means the earlier of the date that the:

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

Customer means the EROAD customer identified in the Agreement.

Data means all information:

- (a) inputted into the Services by Customer;
- (b) automatically generated or collected by:
 - (i) an Application downloaded by a Customer or its drivers; or
 - (ii) the Hardware which has been installed into Customer's Vehicle; or
- (c) owned by Customer which it supplies, or consents to a third party supplying, to EROAD.

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 obligations under this Agreement in the event the Customer breaches these Terms.



Early Termination Fee has the meaning given in clause 4.7.

EROAD means EROAD Limited, of 260 Oteha Valley Road, Albany, New Zealand.

EROAD Approved Installer means an 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, 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 Agreement or in the invoices issued by EROAD.

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.

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.

Minimum Contract Term means the minimum term under which Customer must acquire each unit of Hardware and the associated Services specified in the Agreement or, if the Customer is only acquiring Services from EROAD, the minimum term under which the Customer must acquire those Services. The Minimum Contract Term is the period stated in the Agreement which:

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

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

Payment Service has the meaning given in clause 4.2.

Price means the price for the purchase of the Hardware.

RUC means road user charges, which has the definition set out in the Road User Charges Act 2012.

RUC Licence means a distance licence or an additional licence issued for a RUC vehicle under the Road User Charges Act 2012.

Secured Property has the meaning given in clause 4.10.

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

Software means 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.

Vehicle means a vehicle into which the Hardware is, or will be, installed.

Website means www.eroad.co.nz, depot.eroad.co.nz or any other website operated by EROAD.

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 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 Agreement.

2. HARDWARE SALE OR RENTAL

2.1 **Rental.** Where Customer rents the Hardware:

- (a) EROAD will retain ownership of the Hardware but risk of loss or damage will pass on delivery to Customer's address or to a mutually acceptable third party's address;
- (b) Customer will rent the Hardware and acquire the Services specified in the Agreement for the Minimum Contract Term; and
- (c) Customer will pay EROAD the Fees.

2.2 **Purchase.** Where Customer purchases the Hardware:

- (a) EROAD will sell and Customer will purchase the Hardware for the Price;
- (b) Customer will pay for the Hardware in the manner specified in the invoice;
- (c) ownership of the Hardware will pass to Customer on full payment of the Price but risk of loss or damage will pass on delivery to Customer's address or to a mutually acceptable third party's address;
- (d) Customer will acquire the Services specified in the Agreement for the Minimum Contract Term; and
- (e) Customer will pay EROAD the Fees for accessing the Services.

2.3 **Delivery.** On a date agreed with the Customer, EROAD will arrange for the Hardware to be delivered to Customer's address or to a mutually acceptable third party's address.

2.4 **Installation.** The Customer is responsible for the proper installation of all Hardware according to EROAD's instructions and specifications. Customer may elect to use an EROAD Approved Installer or to self-install. If Customer uses an EROAD Approved Installer, EROAD provides a 12-month warranty that the Hardware was correctly installed. EROAD provides no warranty for installs if the Customer elects to self-install. EROAD is not responsible for damage caused to any Vehicle and will not be required to restore any Vehicle to its pre-installation condition if the Hardware is removed.

2.5 **Warranty.** For any accessories supplied by EROAD for the installation of the Hardware, EROAD warrants that they will be free from material defects for 12 months from the date of supply to the Customer. For any accessories supplied by a third party (including an installer), EROAD will, where available, pass on the benefit of any manufacturer's warranty to the Customer.

2.6 **Registration.** On completion of the installation of the Hardware, Customer will register the Hardware with the NZ Transport Authority and, where necessary, remove any other hubodometer from the Vehicle.

2.7 **Use of Hardware.** Customer will:

- (a) keep the Hardware installed in the Vehicle;
- (b) use the Hardware prudently and in accordance with EROAD's instructions;
- (c) notify EROAD immediately of any loss or damage to Hardware; and
- (d) make the Hardware available to EROAD for inspection, repair and replacement.

3. SERVICES

3.1 **Qualification for Services.** EROAD (either prior to making the Services available to Customer or while Customer is accessing the Services and whether the Services are supplied in a bundle with the Hardware or not):

- (a) may perform credit checks on Customer or the directors or business partners of Customer. Customer (and the directors or business partners of Customer) authorises EROAD to perform credit checks, and Customer warrants that it has the authority of Customer's directors or business partners to provide their details to EROAD for the purpose of performing credit checks. Customer will supply complete,



accurate information for the purposes of any credit check. EROAD may refuse to provide its Hardware or Services as the result of a credit check or request a Bond. If EROAD refuses to supply its Hardware or Services, it will refund the unused portion of any prepaid fees;

- (b) may require Customer to pay EROAD a Bond. Where EROAD requires Customer to pay a Bond the Bond must be paid to EROAD within 7 days of the request. Payment of the Bond does not discharge Customer's obligation to pay to EROAD the Fees. EROAD may draw down on the Bond at any stage for any breach of the Terms or Agreement, including where Customer fails or refuses to pay the Fees, its RUC obligation, or damages the Hardware. Failure to pay the Bond is a breach of these Terms; or
- (c) may require that a Guarantee is provided to EROAD.

3.2 Commencement of Services. With effect from the Commencement Date, but subject to clause 3.1, EROAD:

- (a) will make the Services available to Customer; and
- (b) grants Customer a non-exclusive, non-transferable right to use the Services via the Applications or Website on these Terms.

3.3 Customer Support. Customer support is a key focus of EROAD. EROAD provides a number of self-service customer support channels which are detailed on the Website. Typically, EROAD's 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 Customer is unable to resolve their concerns via these channels, Customer can contact EROAD. EROAD or a third party engaged by EROAD will provide a reasonable level of advice by remote means on how to remedy any problem with the Services and Hardware.

4. RUC, FEES, AND PAYMENT

4.1 Road User Charges. The Fees and Prices do not include the cost of RUC Licences purchased by Customer. Customer will be responsible for, and will pay on demand by EROAD, all RUC Licences used by the Customer. Further, Customer agrees to reimburse EROAD for any expenses incurred by EROAD in respect of Customer's failure to pay for its RUC Licence.

4.2 RUC Licences. At Customer's request EROAD may provide Customer with the ability to purchase RUC Licences from the NZ Transport Authority through EROAD's payment gateway (the **Payment Service**). Customer will comply with the Road User Charges Act 2012 and any other requirements of the NZ Transport Authority with respect to any RUC Licence transactions. It is the Customer's obligations to verify and continually monitor whether the Hardware and associated Services are operating and calculating the Vehicle's distance travelled, and RUC, correctly.

4.3 Commencement of Payment Service. In order to use EROAD's Payment Service, Customer will:

- (a) provide accurate bank account or credit card information to EROAD to allow EROAD to process the transaction for the RUC Licences; and
- (b) authorise EROAD to withdraw from Customer's designated account at the required times, or to charge the credit card supplied by the Customer to EROAD, the appropriate amounts for the RUC Licence.

4.4 Customer Obligations. In order to use the Payment Service, Customer will:

- (a) maintain active and accurate payment authorisations with EROAD;
- (b) maintain sufficient funds in its designated account to cover Customer's RUC obligations; and
- (c) be responsible for, and pay, any penalties or interest to the Organisation (or EROAD, if charged to EROAD in respect of Customer) related to any improper document filing, payment shortage, or late payment.

4.5 Ownership of RUC Licence. EROAD retains the ownership of any RUC Licence purchased by Customer through the Payment Service until the RUC Licence fee has been paid in full. If Customer fails to pay the RUC Licence fee when demanded, EROAD may, without liability to Customer, surrender the RUC Licence to the NZ Transport Authority for a refund and suspend or terminate the Agreement.



- 4.6 Invoicing and payment of Price and Fees.** EROAD issues its invoices for Price and Fees to Customers monthly in advance. The first invoice is issued by EROAD at the earlier of:
- (a) 30 days from the date that the first unit of Hardware is dispatched to Customer in order to provide Customer with time to have the Hardware installed. The Customer does not pay any Fees to EROAD for these first 30 days; or
 - (b) the date that the first Hardware unit is installed in a Vehicle.
- The first invoice to Customer will contain:
- (c) for Customers that purchase the Hardware, the Price for purchasing the Hardware and the Fees for the following month's use of the Service; or
 - (d) for Customers that rent the Hardware, the Fees for the following month's use of the Hardware and the Service.
- Following the issue of the first invoice, EROAD will continue to issue invoices to Customer for the Fees on a monthly basis. All Fees and Prices contained in the invoice are payable within 14 days of the invoice being issued. Customer will pay the Fees in the manner specified in the invoice or as otherwise listed on the Website.
- 4.7 Review of Fees.** EROAD reserves the right to review the use of its Services by the Customer and EROAD can invoice the Customer, and the Customer will pay, for any use of the Services by the Customer not currently being paid for.
- 4.8 Minimum Contract Term.** If Customer terminates the Agreement, ceases renting the Hardware or accessing the Services during the Minimum Contract Term, then Customer 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 Customer 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 Customer not ceased renting the Hardware or accessing the Services (the **Early Termination Fee**).
- 4.9 Additional Fees.** EROAD reserves the right to invoice the Customer additional fees reflecting the cost of:
- (a) Hardware installation and associated travel costs;
 - (b) RUC administration charges;
 - (c) refurbishing Hardware; and
 - (d) any accessories necessary for the installation of Hardware.
- Additional Fees are payable on the terms set out at clause 4.6.
- 4.10 Personal Property Security Register.** The Customer:
- (a) acknowledges that these Terms constitute a security agreement for the purposes of section 36 of the Personal Properties Securities Act 1999;
 - (b) acknowledges that a security interest exists in the Hardware and RUC Licences supplied to the Customer under these Terms; and
 - (c) grants a security interest in the Hardware rented by Customer, the first RUC Licence and all future RUC Licences supplied to the Customer under these Terms in respect of all Vehicles (the **Secured Property**).
- 4.11 Information.** The Customer will provide all information and do all things that EROAD may require to ensure that EROAD has a perfected security interest in respect of the Secured Property under the PPSA.
- 4.12 Updates.** The Customer waives its right to receive a verification statement and a requirement for EROAD to keep the secured party informed of any change of name or address.
- 4.13 Failure to Pay.** If the Customer fails to pay the Price, any Fees, or for any RUC Licence, EROAD may terminate the Agreement or suspend the Services or any part of these. EROAD may also charge interest on



any unpaid portion of the Price, the Fees or RUC Licence at 1.5% per month or the maximum rate permitted by law if less, from the due date until the date of payment.

- 4.14 Collection of Fees.** EROAD may enter into factoring arrangements, assign its receivables or enter into other arrangements with third parties in relation to the payment and collection of the Price or Fees. EROAD may also appoint an agent to collect any overdue amount and may pass on Customer information for that purpose. Customer will reimburse EROAD and its agent for all reasonable costs, expenses and legal fees incurred in enforcing Customer's payment obligations.
- 4.15 Set-off.** Any credits, allowances or other amounts payable or creditable by EROAD to Customer will be subject to set off against any claims or other amounts owed by Customer to EROAD.

5. CUSTOMER'S OBLIGATIONS

5.1 Proper Use. Customer will:

- (a) 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;
- (b) ensure the Hardware and accessories (including the speed sensor) are functioning properly at all times;
- (c) use the Hardware, Software, Services and Website for their intended purposes and in accordance with EROAD's directions;
- (d) not tamper, modify, copy, adapt, disassemble, decompile, make derivative works from or reverse engineer the Hardware or Software;
- (e) not use the Services for any illegal or offensive act;
- (f) not undermine the security and integrity of EROAD's computer systems or networks or Services;
- (g) not use the Services in any way that may impair the functionality of the Services, Software or Website;
- (h) not attempt to gain unauthorised access to any materials other than those made available to Customer by EROAD;
- (i) notify EROAD of any improper or illegal use of the Software, Services, Hardware or Website;
- (j) comply with EROAD's directions regarding use of the Software, Services, Hardware or Website;
- (k) be responsible for Authorised Users' use of the Services;
- (l) insure the Hardware against theft, loss, damage or accidents;
- (m) where the Customer has rented the Hardware, Customer will:
 - (i) not transfer, charge or part with possession of the Hardware; and
 - (ii) make the Hardware available to EROAD for inspection, repair and replacement.

5.2 Security. Customer will:

- (a) keep secure and confidential all passwords used by Customer and Authorised Users in connection with the Services; and
- (b) notify EROAD of any unauthorised use of Customer's or an Authorised User's password, unauthorised possession of or access to the Hardware or the Services or any other breach of security.

5.3 Acknowledgements. Customer acknowledges that:

- (a) EROAD strives to provide Customers with great Services and Hardware. And, while EROAD intends to make the Services available 24 hours a day, 365 days a year, the Services may be interrupted for scheduled maintenance or for reasons beyond EROAD's control. EROAD will not be responsible for any such interruptions, but if Services are likely to be interrupted for extended periods, EROAD will use reasonable efforts to provide advance notice of such interruption on the Website;
- (b) The Services depend on availability and proper performance of third-party systems, such as computer



networks, the Internet, and cellular networks, which can be unpredictable and which may from time to time interfere with use of, or limit access to, the Services;

- (c) EROAD has created a technology platform to store Data that meets or exceeds internationally accepted control objectives and practices for privacy, security and information systems. EROAD also intends to maintain a back-up of the Data. However, no back-up system is completely failsafe and Customer will not hold EROAD responsible, nor bring any claims against EROAD, for any loss, corruption, destruction or alteration of Data;
- (d) EROAD has developed Services and Hardware to assist Customers in their tax management and compliance obligations and provides additional commercial Services that give Customers operational transparency and enhanced control over their Vehicles. The Customer acknowledges however that the Services and Hardware have not been developed to meet Customer's individual requirements and that it is therefore Customer's responsibility to ensure that the Services and Hardware meet its requirements and are suitable for Customer's purposes. Except as otherwise provided in these Terms, Customer's access to and use of the Services is on an "as-is" basis and at Customer's own risk. The Customer also acknowledges that EROAD is not in the business of providing professional advice (e.g. taxation, vehicle safety or fleet management advice) and Customer is therefore responsible for verifying any information given by EROAD before relying on or making use of it;
- (e) Customer may grant access to the Services to its Authorised Users. Customer is solely responsible for granting proper authorisation to Authorised Users and EROAD has no responsibility to any person other than Customer under these Terms;
- (f) Customer is authorised to use the Services and to access the Data made available through the Services; and
- (g) Customer remains solely responsible for complying, and ensuring that all Authorised Users comply, with all applicable laws, rules and regulations, including without limitation those relating to operation of the Vehicle and use of the Hardware and Services.

5.4 Indemnity. To the extent permitted by law, Customer will indemnify EROAD against any direct and reasonable claims, damages, or costs (including lawyer fees), arising from (1) Customer's unauthorised use of or access to the Hardware, Software or Services; (2) EROAD's refusal to provide any person access to Customer's Data; (3) EROAD's provision of Data to any person authorised by Customer; (4) any intentional breach of these Terms or the Agreement or wilful omission by Customer or Authorised Users; (5) damage caused to the Hardware and (6) bodily injury, death or damage to the property of any person caused by the negligence or wilful misconduct of Customer or any person for whom Customer is responsible.

6. WARRANTIES

6.1 Hardware Warranty. EROAD warrants that:

- (a) where the Hardware has been purchased by Customer, it will be free from material defects for one year from the Commencement Date;
- (b) where the Hardware is rented by Customer, EROAD warrants that the Hardware will be free from material defects for the life of the relevant rental term; and
- (c) in either case, it will support the Hardware so that it can interoperate with the Services for 36 months from the Commencement Date.

6.2 Warranty exclusions. The warranty in clause 6.1 will not apply if the Hardware has been:

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

6.3 Services Warranty. EROAD warrants that:

- (a) it has the authority to make Services available to Customer;
- (b) the Services and Software do not infringe the Intellectual Property Rights of a third party;



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

7. REMEDIES AND LIMITATION OF LIABILITY

7.1 Remedies. In the event that EROAD's Hardware or Services do not perform in accordance with the warranties at clause 6, or if EROAD breaches the Terms, or the Customer makes a warranty claim under clauses 2.4 or 2.5, Customer's sole and exclusive remedies are as follows:

- (a) During the warranty period EROAD will, at its sole discretion, repair or replace any defective Hardware or accessories. Where the Hardware is rented by Customer and is improperly installed by the Customer, altered by Customer or any other unauthorised person, or is subjected to abuse, misuse, neglect, or accident, EROAD may, at its discretion, repair or replace the Hardware and charge Customer the cost of repairing or replacing the Hardware.
- (b) In relation to the Services, EROAD 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) restore the most recent back up of the Customer's Data.

7.2 Other warranties excluded. Except for the warranties in section 6 and any warranties that may not lawfully be excluded, EROAD expressly disclaims all representations and warranties (statutory, express or implied), including all warranties of merchantability, fitness for a particular purpose and accuracy of the Services.

7.3 Third party products or services. If requested by the Customer, EROAD may supply third party products or services to Customer or enable or assist Customer to access, use or purchase third party products or services. EROAD makes no representations or warranties, and has 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 EROAD or installers to Customer.

7.4 No liability. To the maximum extent permitted by law, EROAD excludes all liability in contract, tort (including negligence) and under statute and EROAD will not be liable for any loss of Data or information, or loss of profits, revenue, or opportunities or indirect, special, punitive or consequential loss or damage however caused, arising out of the use of the Hardware, Services, Software, Website or Applications.

7.5 Liability limited to Fees. If, despite clauses 7.1 to 7.4, EROAD is found liable to the Customer for any loss or damage, that liability will not exceed the Fees actually paid by Customer in the 12 months before the liability arose.

8. INTELLECTUAL PROPERTY

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

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

8.3 Trade marks. Customer has no right to use EROAD's trade marks, unless it is granted a limited, non-exclusive licence to reproduce EROAD's trade marks in marketing materials in accordance with EROAD's guidelines.

8.4 Data. The Data is owned by the Customer.

8.5 Infringement. EROAD will defend or settle, at EROAD's sole cost, any claim that the Hardware, Software 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 Customer of any of these Terms or the Agreement.

9. CUSTOMER DATA

9.1 Access to Data. EROAD may prohibit access to the Data if Customer breaches these Terms or the Agreement.



9.2 Third-Party Information. Customer authorises EROAD to:

- (a) obtain carrier, vehicle, and transportation permit information from Organisations, and to file reports with, and provide Data to, the Organisations on Customer's behalf in connection with EROAD providing the Services;
- (b) use, copy, modify, store, disclose and communicate the Data to the extent necessary to enable Customer to use the Services;
- (c) disclose Data to third parties where Customer accesses, uses or purchases third party products or services in connection with the Hardware or Services; and
- (d) disclose Data relating to Customer's RUC Licence and the distance travelled as recorded, and stated, on the Hardware to Organisations to assist the Customer to comply with the Road User Charges Act 2012.

9.3 Confidentiality. EROAD 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.

9.4 Use of Anonymous Information. Subject to Customer's personally identifiable information having been removed, EROAD may aggregate the Data with other data for EROAD's internal purposes, reporting industry-specific statistics and trends, and reporting to an Organisation or other entities. EROAD may receive consideration from third parties for such services.

9.5 Maintenance of Information following Termination. Following termination of the Services, EROAD will use commercially reasonable efforts to preserve the Data for six years. During that period, Customer may request, for a fee, extraction of its Data. EROAD will use commercially reasonable efforts to extract the requested Data, but disclaims any guarantee of availability or preservation of such Data.

9.6 Privacy Policy. EROAD maintains a Privacy Policy that sets out the parties' obligations in respect of personal information and Data. EROAD encourages Customers to read that policy at www.eroad.co.nz/nz/privacy-policy. Customer will be taken to have accepted that policy when it accepts these Terms.

10. TERM AND TERMINATION

10.1 Term. Subject to clause 10.2:

- (a) where Customer purchased the Hardware, Customer agrees to acquire the Services specified in the Agreement for the Minimum Contract Term; or
- (b) where Customer rents the Hardware, Customer agrees to rent the Hardware and acquire the Services specified in the Agreement for the Minimum Contract Term.

Once the Minimum Contract Term expires, this Agreement will continue on a month-to-month basis. EROAD may adjust the Fees following the expiry of the Minimum Contract Term.

10.2 Termination by EROAD. EROAD may suspend, reduce or terminate the Services or rental of the Hardware:

- (a) if Customer breaches these Terms or the Agreement and fails to remedy the breach within 10 days of receiving notice of the breach from EROAD; or
- (b) Customer becomes insolvent or makes an assignment for the benefit of creditors.

10.3 Termination by Customer. After the expiration of the Minimum Contract Term, Customer may terminate the Agreement on giving EROAD 30 days' notice in writing.

10.4 Effect of Termination. On termination of the Services or rental of the Hardware:

- (a) EROAD will cease providing and Customer will cease using the Services;
- (b) Customer will remain liable for payment of all Fees due at the time of termination and, if terminated



during the Minimum Contract Term, the Early Termination Fee; and

- (c) If Customer rents the Hardware, be responsible for removing the Hardware and returning the Hardware to EROAD at Customer's cost in good working order (fair wear and tear excepted) within 14 days of notifying EROAD of termination.

11. GENERAL

- 11.1 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.
- 11.2 No Assignment.** Customer may not assign any of its rights or obligations under these Terms to any person without EROAD's prior written consent. A change in the ownership or control of Customer is deemed to be an assignment or transfer of the Agreement.
- 11.3 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/or commitments, whether written or oral.
- 11.4 Change of Terms.** EROAD may change these Terms at any time by publishing the updated Terms on the Website. Customer's continued use of the Services will constitute acceptance of the amended Terms.
- 11.5 Contracting out.** To the extent permitted by law, where the Hardware and Services are acquired in trade by 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, EROAD and the Customer agree to contract out of sections 109, 111, 114(1)(a), 122 and 128 of the Personal Property Securities Act 1999.
- 11.6 Governing Law.** These Terms are governed by the laws of New Zealand.
- 11.7 Survival.** Clauses 4.1, 4.5, 5.4, 7, 8, 9.3, 9.4, 9.5 and 11.5 will survive termination of the Agreement.

v 3.0 February 2017