



## EROAD's TERMS – North America

### 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 tax management, 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. 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 License Agreement.

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

### C. IMPORTANT

**It is important that you read the Agreement in full prior to using EROAD's Hardware, Services or Applications, but some points we want to bring to your 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 Hardware and pay the associated Early Termination Fees. We explain this in more detail in clause 5.11 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 the 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:

**ACH** means automated clearing house electronic payment products.

**ACH Transfer** means the transfer of funds from one account to another via EROAD's third-party ACH gateway provider.

**Additional Fees** means the ancillary fees for the provision of Hardware and Services including, but not limited to, Hardware installation and deinstallation fees and travel costs, account activation fees, Reconnection Fees, shipping and handling fees, expedited shipping (if requested by Customer), dishonour fees and fees for any accessories necessary for the installation of Hardware.

**Affiliates** means any legal entity or other business organization 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 License Agreement, as may be renewed or amended from time to time.

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

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

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

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

**Charges** has the meaning given in clause 5.9.

**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 Authorized User.

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

**Data** means all information:

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

**Early Termination Fee** has the meaning given in clause 5.11.



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

**EROAD/ we/ our/ us** means EROAD Inc, incorporated in the State of Oregon, USA.

**Fees** means:

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

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

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

**Highway Tax** means any highway, fuel or road user charge or similar tax, levy, fee or any other charge or toll collected by an Organization in relation to the commercial operation of vehicles on roads, for example IFTA, IRP or a Weight Mile Tax.

**Intellectual Property Rights** means rights to patents, trademarks, 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 the average yield of the 91-day US Treasury Bill Rate as measured over the 7 days prior to the first day of default.

**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 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).

Minimum Contract Term includes any Renewal Term.

**Organization** means 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 5.8.

**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 Law** means all federal and state 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.

**Reconnection Fee** has the meaning given in clause 5.12.

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

**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.

**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.

**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.

**Vehicle** means a Customer vehicle, mobile machinery or equipment into which the Hardware is, 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; and
- (d) if there is a conflict or inconsistency between the terms of a Sales and Services Agreement, these Terms and, where applicable, an End User License Agreement, then, to the extent of the conflict or inconsistency, the following order of precedence shall apply (in descending order of priority):
  - i. these Terms;
  - ii. an End User License 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. 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.

### **3. NETWORK DEPENDENCIES**

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

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

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

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

**3.3 No Third-Party Relationships.** You acknowledge and agree that you 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. CUSTOMER'S RESPONSIBILITIES**

**4.1 Installation of Hardware.** You agree to be responsible for the proper installation of all Hardware according to our instructions and specifications. We may provide a referral for third-party Hardware installers on the Website or on your request. But we do not warrant, guarantee or assume liability for installation by these installers. You are responsible for ensuring the Hardware and accessories (including the speed sensor where applicable) are properly and safely installed in the Vehicle(s) including in compliance with applicable laws and ordinances and remain so for the term of the Agreement. Hardware installation may require necessary modifications (including drilling screw holes and rewiring) to your Vehicle(s). We will not be responsible for any such damage caused to any Vehicle and will not be required to restore any Vehicle to its pre-installation condition if the Hardware is removed.

**4.2 Care of Hardware.** You agree to look after all Hardware and accessories and to pay for any repair or replacement if it is damaged while in your possession or control. However, you will not be liable for normal 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) keep the Hardware installed in the Vehicle (where the Hardware was supplied for the purposes of an installation in a vehicle) and not transfer the possession of the Hardware without our prior written approval;
- (c) on request, make the Hardware available to EROAD or a Third Party Provider for inspection, repair and replacement;
- (d) not alter, repair or recalibrate the Hardware or accessories;
- (e) protect Hardware from water, fire, vermin, insect infestation, theft and any other risks of loss or damage. You agree to insure the Hardware against theft, loss, damage or accidents to its full replacement value; and
- (f) notify us immediately of any loss, theft or damage to Hardware.

**4.3 Proper Use.** You will:

- (a) use the Hardware, Software, Services, Applications and Website for their intended purposes and in accordance with our directions;
- (b) not tamper, modify, copy, adapt, disassemble, decompile, make derivative works from or reverse engineer the Hardware or Software;
- (c) not use the Hardware, Software, Services, Applications or Website for any illegal or offensive act;
- (d) not undermine the security and integrity of EROAD's computer systems or networks or Services;
- (e) not use the Services in any way that may impair the functionality of the Services, Software, Applications or Website;
- (f) not attempt to gain unauthorized 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 or Website; and
- (i) be responsible for Authorized Users' use of the Hardware, Software, Application, Website and Services and ensure Authorized Users abide strictly with all applicable laws.

**4.4 Security.** You will:

- (a) keep secure and confidential all passwords used by you and your Authorized Users in connection with the Services;



- (b) notify EROAD of any unauthorized use of your or your Authorized User's password, unauthorized possession of or access to the Hardware or Services or any other breach of security;
- (c) not knowingly allow the Hardware, Services or Applications to be affected by any virus, worms or any destructive media;
- (d) be solely responsible for anyone who accesses or uses the Hardware, Services and Applications, whether authorized by you or not;
- (e) be responsible for granting proper authorization to Authorized Users; and
- (f) be solely responsible for everything that Authorized Users do when using the Hardware, Software, Application, Website or Services.

**4.5 Compliance.** You remain solely responsible for complying, and ensuring that all Authorized Users comply, with all applicable laws, rules, regulations and ordinances, including without limitation those relating to operation of the Vehicle and use of the Hardware and Services, and any privacy and disclosure laws. You acknowledge and agree that 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.

**4.6 Consents.** You are solely responsible for obtaining all necessary informed consents from Authorized Users and any other person who accesses or uses the Hardware and Services for EROAD's collection, storage, use and sharing of Data in accordance with these Terms and the Privacy Policy.

## **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 pay a Bond. We may also obtain, or require a third party to perform, credit checks. You authorize us to obtain or require a third party to perform credit checks at any time on you (including your directors and business partners). You warrant that you have authority of your directors and business partners to provide their details to us for the purposes of performing credit checks. You will supply complete and accurate information for the purposes of any credit check. We may refuse to provide Hardware or Services as the result of a negative credit history. If we refuse to supply Hardware or Services, we will refund the unused portion of any prepaid Fees.

**5.2 Bond.** Where we require you to pay a Bond, the Bond must be paid to EROAD within 7 days of the request. Payment of the Bond does not discharge your obligation to pay the Hardware Price, if applicable, and Fees that are due. EROAD may draw down on the Bond at any stage for any breach of the Agreement, including where you fail or refuse to pay the Fees or you damage the Hardware. Failure to pay the Bond 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 associated accessories you will also be required to pay the Fees to access the Services and Additional Fees, such as freight or accessory charges.

**5.4 Our Fees.** You will pay all our Fees and Additional Fees in relation to renting the Hardware (if applicable) and accessing the Services (including, where applicable, the Payment Service). 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 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 and Services at the earlier of:

- (a) 30 days from the date that the first unit of Hardware is dispatched to you (to give you time to install the Hardware and start using the Services);
- (b) the date the first Hardware unit is installed in a Vehicle; or
- (c) the date Services are first made available to you.

**5.6 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;
- (b) if you are renting the Hardware, the Fees for the use of the Hardware and Services; and
- (c) any Additional Fees.

We will issue invoices either monthly in advance or in arrears for certain Hardware and Services invoiced on a usage-basis and overage charges. All invoices must be paid 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.

**5.7 Your Highway Tax Obligations.** As an additional service and with our prior approval, you may choose to pay for your Highway Tax through us by using EROAD's payment gateway (the **Payment Service**). In this case, the cost of Highway Tax will be additional to the Fees, Hardware Price and Additional Fees. When providing the Payment Service, we are acting as a payment facilitator to you and not as an agent for the Organization.

**5.8 Payment Service.** Subject to clause 5.7, where you choose to use the Payment Service you:

- (a) authorize EROAD to withdraw from your designated account at the required times the appropriate amounts for the Highway Tax;
- (b) will provide accurate ACH Transfer information to EROAD to allow us to process the transaction for the Highway Tax;
- (c) will maintain active and accurate ACH authorizations with EROAD;
- (d) must first transfer sufficient funds to meet your Highway Tax obligations from your designated account to our account via ACH Transfer. Once the cleared funds are in our account, we will instruct the Organization to withdraw the appropriate amount for payment of your Highway Tax obligation;
- (e) will maintain sufficient funds in your designated account to cover your Highway Tax obligations; and
- (f) will be responsible for, and pay, any penalties or interest to the Organization (or EROAD, if charged to EROAD in respect of Customer) related to any improper document filing, payment shortage, or late payment.

**5.9 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 within 2 months of the date of the relevant invoice. Should you fail to notify us of the dispute within this period you will not be entitled to dispute the Charge or make any claims against us in relation to the disputed Charge. 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.

**5.10 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 5.9, 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 5.9,

are subject to interest charged on a monthly basis from the due date for payment until the date on which you make payment in full to us at the Interest Rate plus 3% per annum or the maximum rate permitted by law if less. In addition to such interest, we may appoint an agent to collect any overdue Charges. You agree to pay any costs that are incurred by such agents in recovering the money you owe or in exercising any other rights, including recovery of commissions and legal costs on a solicitor and client basis. 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.

**5.11 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.

**5.12 Account Suspension and Reconnection.** If you have purchased Hardware and the Minimum Contract Term has expired, you may suspend your use of the Services for any such Hardware unit on giving us 30 days' written notice. We will stop charging you the associated Fees for the duration of the suspension. You may reconnect the Services for such Hardware units by giving us 10 days' written notice and paying a Hardware reconnection fee for each reconnected Hardware unit (the **Reconnection Fee**). The Reconnection Fee is \$100 per unit up to a maximum of \$1,500 for all Hardware units reconnected in a calendar month. We will reconnect the Services within 7 days after receiving the Reconnection Fee from you. Invoicing for the Fees for such Services will resume as set out in clause 5.6.

**5.13 Account Activation Fee.** At the Commencement Date, to activate the Services, you must pay us an account activation fee. If at any time you breach the Agreement and we subsequently suspend the Services, you must pay another activation fee in order to reactivate the Services.

**5.14 Changes to Fees.** We will endeavor not to change the Fees during your Minimum Contract Term. 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 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.

**5.16 Upgrades.** If you request to purchase or rent additional Hardware or Services, or new hardware or services released by us, additional charges and a Minimum Contract Term will apply.

**5.17 Taxes.** The Fees and Hardware Prices are exclusive of all taxes and duties. You are responsible, and agree to pay, all taxes and duties applicable to the Hardware and the Services (including any taxes and duties that you, or we on your behalf, are liable to pay but which we have omitted to collect or pay for during the term of the Agreement). Where we are required by law to collect taxes or duties from you,



we will collect these from you in addition to the Fees and Hardware Prices listed and you will pay the taxes unless you are exempt from doing so and have provided us with a valid exemption certificate.

## **6. PROPERTY RIGHTS**

- 6.1 Passing of Risk.** Unless otherwise agreed in writing between us, risk of any loss of, or damage to, Hardware will pass to you upon the earlier of delivery to your premises, or to a mutually acceptable third party's address, or receipt by you. If any Hardware is lost, stolen or damaged whilst in your Vehicle(s) or whilst in your control you will pay the cost of repairing or replacing the Hardware, except where the loss, theft or damage was caused by us.
- 6.2 Title.** You agree that, where you purchase Hardware, ownership of such Hardware will pass to you on full payment of the Hardware Price. We will retain ownership of any Hardware you rent.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 EROAD Ownership.** The Intellectual Property Rights in the Services, Applications, Website, Software and Hardware are owned by, or are licensed to, EROAD. Any new Intellectual Property Rights that are created as a result of, or in connection with the provision of Services, Applications, Website, Software and Hardware are owned by us, unless specified otherwise in this Agreement.
- 7.2 No Copying.** You will not reproduce, translate, adapt, reverse engineer, make derivative works from or modify any component of or documentation relating to the Website, Applications, Hardware, Software or the Services.
- 7.3 Trademarks.** You have no right to use EROAD's trademarks, unless you are granted in writing a limited, non-exclusive license to reproduce EROAD's trademarks in marketing materials in accordance with EROAD's guidelines.
- 7.4 Infringement.** EROAD will defend or settle, at EROAD's sole cost, any claim that the Hardware, Software, Applications, Website or Services infringe any other person's Intellectual Property Rights, provided that (1) EROAD has full control of the conduct of the defense 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 the Term of this Agreement we, or a Third Party Provider, may collect, create and generate Data. During the Term and subject to you meeting your obligations under this Agreement, we authorize you to access Data made available through the Services. We will use reasonable commercial endeavors 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 Organizations, and file reports with, and provide Data to, the Organizations 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; and
- (f) disclose Data to third parties where you access, use or purchase third party products or services in connection with the Hardware or Services.



**8.3 Anonymous Information.** Subject to any Personal Information having been removed, we may aggregate the Data with other data for EROAD's internal purposes, reporting industry-specific statistics and trends, reporting to an Organization 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. We encourage you to read that policy at [Privacy Policy](#). The Privacy Policy forms part of the Agreement.

**8.5 Confidentiality.** We will:

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

**8.6 Privacy.** You:

- (a) must comply with EROAD's Privacy Policy and any Privacy Laws by which you are bound;
- (b) must, both during and after the term of this Agreement:
  - i. take all reasonable steps to ensure that Personal Information is protected against misuse and loss, or unauthorized use, access or disclosure, including by not disclosing any Personal Information to a third party without authorization;
  - ii. not do anything which may cause EROAD to breach any Privacy Law; and
  - iii. if requested by EROAD, co-operate with EROAD to resolve any complaint or investigation under any Privacy Law, and provide other reasonable assistance.
- (c) acknowledge that EROAD may provide the services under this Agreement from any locations, or through the use of contractors, worldwide; and
- (d) agree to provide any information, and to obtain any consents, relevant to your 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 make an assignment for the benefit of creditors; or
- (c) we refuse to provide Hardware or Services to you pursuant to clause 5.1.

**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 after the Commencement Date but prior to the expiry of the Minimum Contract Term, you will be liable to pay Early Termination Fees as set out in clause 5.11; or



- (b) we become insolvent or make an assignment for the benefit of creditors.

**9.4 Termination of Payment Service.** You may discontinue the Payment Service at any time by notifying us in writing. We may terminate the 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, Fees and Additional Fees due at the time of termination and, subject to clause 9.3(a), if terminated on or after the Commencement Date but before the expiration of the Minimum Contract Term, the Early Termination Fee;
- (c) if you rent the Hardware, be responsible for removing the Hardware and returning the Hardware to EROAD at your cost in good working order (normal wear and tear excepted) within 14 days of notifying EROAD of termination; 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 defenses, 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, deletion 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 (normal wear and tear excepted) for:
  - i. one year from the Commencement Date, when you purchase the Hardware;
  - ii. the duration of the Minimum Contract Term, when you rent the Hardware.
- (b) for any accessories manufactured by us and supplied to you for the installation of the Hardware, we will provide a manufacturer's warranty against material defects (normal 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 has been improperly installed by any person;
- (b) the Hardware has been altered by you or any other unauthorized person;
- (c) the Hardware has been subjected to abuse, misuse, neglect, or accident; or
- (d) you are in breach of clause 4.3.

**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 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 ATTORNEY FEES), ARISING FROM (1) YOUR UNAUTHORIZED USE OF OR ACCESS TO



THE HARDWARE, SOFTWARE OR SERVICES; (2) YOUR INTENTIONAL BREACH OF THE AGREEMENT OR WILFUL OMISSION BY YOU OR AUTHORIZED USERS; (3) A THIRD PARTY CLAIM THAT WE HAVE BREACHED ANY APPLICABLE PRIVACY LAWS 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, EROAD'S HARDWARE CAUSED BODILY INJURY, DEATH OR PHYSICAL DAMAGE TO THE PROPERTY OF ANY PERSON.

**11.2 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) In relation to Hardware, 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 unauthorized person, or is subjected to abuse, misuse, neglect, or accident, we may, at our discretion, repair or replace the Hardware and charge you the cost of repairing or replacing the Hardware.
- (b) In relation to the Services, we will use commercially reasonable endeavors 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, we will 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 or Services (or any part of them) is conditional upon you promptly notifying us in writing of the defect or failure and giving us a reasonable opportunity to investigate and remedy any defect or failure relating to such Hardware or Services. We will not be liable under this clause, or obligated to perform any tasks under this clause 11.2, if the defect or failure cannot be verified or reproduced by us.

If we reasonably consider it necessary, we will travel to you for any Hardware warranty repair 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 miles.

**11.3 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 AND SERVICES OR APPLICATIONS, NON-INFRINGEMENT AND AGAINST HIDDEN DEFECTS. WITHOUT LIMITING THE FOREGOING, WE DISCLAIM ANY WARRANTY THAT ANY EROAD PRODUCTS OR SERVICES WILL BE ERROR FREE, OR THAT ERRORS WILL BE CORRECTED, OR THAT THE USE OF THE EROAD PRODUCTS OR SERVICES WILL BE UNINTERRUPTED. WE FURTHER DISCLAIM ANY AND ALL WARRANTIES ARISING FROM COURSE OR DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED FROM EROAD OR ELSEWHERE WILL CREATE ANY WARRANTY UNLESS EXPRESSLY STATED IN THIS AGREEMENT.

**11.4 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.

**11.5 LIABILITY EXCLUSIONS.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER STATUTE, OR OTHERWISE, FOR:



- (a) ANY BREACH OF THIS AGREEMENT TO THE EXTENT THAT THE BREACH IS ATTRIBUTABLE TO THE DEFAULT, NEGLIGENCE, MISCONDUCT OR BREACH OF THE OTHER PARTY, ITS EMPLOYEES OR AGENTS; OR
- (b) ANY LOSS OF PROFITS, REVENUE, OR OPPORTUNITIES, OR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE, OR FOR ANY LOSS OF DATA OR INFORMATION RESULTING, DIRECTLY OR INDIRECTLY, FROM ANY USE OF, OR RELIANCE ON, THE HARDWARE, SERVICES, SOFTWARE, WEBSITE OR APPLICATIONS.

**11.6 LIABILITY LIMITED TO FEES.** IF, DESPITE CLAUSES 11.2 TO 11.5, WE ARE FOUND LIABLE TO YOU FOR ANY LOSS OR DAMAGE, THAT TOTAL LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS, IRRESPECTIVE OF THE FORM OF ACTION, WHETHER IN CONTRACT, EQUITY, TORT OR OTHERWISE, ARISING OUT OF OR INCIDENTAL TO THIS AGREEMENT, WILL NOT EXCEED THE FEES ACTUALLY PAID BY YOU IN THE SIX (6) MONTHS IMMEDIATELY BEFORE THE LIABILITY AROSE.

## **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.

**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.** 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 Attorney Fees/Costs.** In the event that a legal proceeding (including an arbitration or an appeal) is commenced or brought in relation to the Agreement or any Hardware or Services supplied under the Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorney, paralegal, and other professional fees, as well as any and all other fees, costs, and expenses of any kind incurred in connection with the proceeding as determined by the judge or arbitrator in addition to all other amounts provided for by law.

**12.8 Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party will be liable for any failure or delay in complying with any obligation under this Agreement (excluding any payment obligation) if:

- (a) the failure or delay arises directly from a Force Majeure Event;
- (b) that party, on becoming aware of the Force Majeure Event, promptly notifies the other party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that party to mitigate or remedy the Force Majeure Event;



- (c) that party uses its reasonable endeavors to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement;
- (d) that party performs that party's obligations which are not affected by the Force Majeure Event; and
- (e) performance of any obligation affected by a Force Majeure Event is resumed as soon as practicable after the end of the Force Majeure Event. 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.

**12.9 Governing Law.** These Terms are governed by the laws of the State of Oregon and the parties submit to the jurisdiction of any local, state, or federal court located in Washington County, Oregon.

**12.10 Survival.** Clauses 5.10, 5.11, 5.15, 5.17, 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.