



EROAD's TERMS

EROAD provides software, 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 Tax Management, IFTA Reporting, Permit Management, EZfuel Report, Over Speed Reports, Fleet Activity) require you to have Hardware installed in your vehicles. You may purchase and own the Hardware and pay EROAD a monthly fee to access the Services or you may rent the Hardware and access Services in a bundle from EROAD for a monthly fee. Other Services may be made available by EROAD to Customers and their drivers for access on their portable smart devices.

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;

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 their portable smart devices;

Authorized 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, where required, for Customers that rent or purchase the Hardware, an amount equal to the combined first six months' Fees for accessing the Services together with the Price for the Hardware.

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 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 by way of a third-party data feed.

Early Termination Fee has the meaning given in clause 4.3;



EROAD means EROAD Inc, incorporated in the State of Oregon, USA;

Fees means:

- (a) where Customer has purchased the Hardware, the fees charged by EROAD to Customer for accessing the Services;
- (b) where Customer is renting the Hardware, the bundled fees charged by EROAD to Customer for renting the Hardware and 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 hardware provided 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;

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 Oregon's 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;

Minimum Contract Term means the minimum term under which Customer must acquire each unit of Hardware and the associated Services specified in the Agreement. The Minimum Contract Term is either:

- (a) the period stated on page one of the Agreement that commences on the date that EROAD issues its first invoice to Customer for each unit of Hardware and the associated Services specified in the Agreement; or
- (b) if no term is stated in the Agreement, the Minimum Contract Term for each unit of Hardware and the associated Services specified in the Agreement is the period of 36 months commencing 30 days from the date that EROAD dispatches each unit of Hardware to Customer.

Organization means a territorial, state or government entity, or a private entity, responsible for collecting highway, fuel, road user charges or similar taxes, levies, fees or any other charges or tolls;

Payment Service has the meaning given in clause 11.1;

Price means the price for the purchase of the Hardware;

Reconnection Fee has the meaning given in clause 4.3;

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.com 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;
- (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 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 or by any other method acceptable to EROAD;
- (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.

2.2 Rental. Where Customer rents the Hardware:

- (a) EROAD will retain ownership of the Hardware but risk of loss of 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 for renting the Hardware and acquiring the Services in a bundle.

2.3 Upgrades. Customer may request to purchase or rent additional Hardware or new hardware released by EROAD by contacting EROAD. The Price or Fees for additional Hardware or new hardware will be subject to the then prevailing Price or Fees at that time.

2.4 Delivery. On the date specified in the Agreement, or as otherwise agreed with Customer, EROAD will arrange for the Hardware to be delivered to Customer's address or to a mutually acceptable third party's address.

2.5 Installation. The Customer is responsible for the proper installation of all Hardware according to EROAD's instructions and specifications. EROAD may provide a referral for third-party Hardware installers on the Website or on Customer's request, but EROAD does not warrant or guarantee proper installation by any installer. The Customer is responsible for installing the Hardware in compliance with applicable laws and ordinances. 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.

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) authorizes 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; and
- (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 monthly 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 EROAD's Fees or damages the Hardware. Failure to pay the Bond is a breach of these Terms.

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. EROAD's customers have found that these self-service customer support channels are the most efficient way of 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. FEES AND PAYMENT

4.1 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 on the Commencement Date of this Agreement and will contain the installation fees, any additional fees incurred under clause 4.6 and the Price if the Customer is purchasing the Hardware.

The second invoice is issued 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 second invoice to Customer will contain:

- (a) for Customers that purchase the Hardware, the Fees for the following month's use of the Service; or
- (b) 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 second 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.

4.2 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.

4.3 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 each unit of Hardware and the associated Services specified in the Agreement unless the Agreement says otherwise. The early termination fee is an amount equal to the total amount of Fees that would have been payable by Customer for each unit of 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**).

4.4 Account Suspension and Reconnection. If Customer has purchased the Hardware and the Minimum Contract Term has expired, Customer may choose to suspend its use of the Services for the Hardware unit on giving EROAD 30 days' written notice. EROAD will suspend the Services and cease charging the associated Fees for the Services for the Hardware unit. Customer may reconnect the Services for the Hardware unit by giving EROAD [10] days' written notice requesting activation and paying a Hardware reconnection fee for each Hardware unit (the **Reconnection Fee**). The Reconnection Fee is \$100 per unit up to a maximum of \$1,500 for all Hardware units connected in a calendar month. Upon receiving written notice of a request for reconnection from Customer, EROAD will invoice Customer for the Reconnection Fee and upon receipt of the Reconnection Fee, EROAD will reconnect the Services for the Hardware unit within 7 days and begin to charge the Customer for the Fees as set out at clause 4.1.

4.5 Account Activation Fee. To activate the Services Customer must pay EROAD an account activation fee. If at



any time the Customer breaches the Terms of the Agreement and EROAD subsequently suspends the Services to the Customer, the Customer must pay an account activation fee in order to reactivate the Services.

4.6 Additional Fees. EROAD reserves the right to invoice the Customer additional fees to reflect the cost of:

- (a) installation and deinstallation of Hardware and associated travel costs;
- (b) account activation fees;
- (c) shipping and handling fees;
- (d) expedited shipping if requested by Customer; and
- (e) any accessories necessary for the installation of Hardware.

Additional Fees are payable on the terms set out at clause 4.1.

4.7 Payment Methods. Acceptable methods of payment are outlined in the invoice or as otherwise listed on the Website.

4.8 Taxes. The Fees and Prices are exclusive of all taxes and duties. Customer will be responsible for, and will pay, all taxes and duties applicable to the Hardware and the Services (including any taxes and duties that Customer, or EROAD on Customer's behalf, is liable to pay but which EROAD has omitted to collect or pay for during the term of the Agreement). Where EROAD is required by law to collect taxes or duties from Customer, EROAD will collect these from Customer in addition to the Prices and Fees listed and Customer will pay the taxes unless Customer is exempt from doing so and has provided EROAD with a valid exemption certificate.

4.9 Failure to Pay. If Customer fails to pay the Price or any Fees, EROAD may terminate the Agreement or suspend the Services. EROAD may also charge interest on any unpaid portion of the Price or the Fees at 1.5% per month or the maximum rate permitted by law if less, from the due date until the date of payment.

4.10 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 its 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 costs, expenses and attorney fees incurred in enforcing Customer's payment obligations.

4.11 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) keep the Hardware installed in the Vehicle;
- (b) use the Hardware, Software, Services and Website for their intended purposes and in accordance with EROAD's directions;
- (c) not tamper, modify, copy, adapt, disassemble, decompile, make derivative works from or reverse engineer the Hardware or Software;
- (d) not use the Services for any illegal or offensive act;
- (e) not undermine the security and integrity of EROAD's computer systems or networks or Services;
- (f) not use the Services in any way that may impair the functionality of the Services, Software or Website;
- (g) not attempt to gain unauthorized access to any materials other than those made available to Customer by EROAD;
- (h) notify EROAD of any improper or illegal use of the Software, Services, Hardware or Website;
- (i) comply with EROAD's directions regarding use of the Software, Services, Hardware or Website;
- (j) be responsible for Authorized Users' use of the Services;
- (k) where Customer has rented the Hardware, Customer will:
 - (i) not transfer, charge or part with possession of the Hardware;
 - (ii) notify EROAD immediately of any loss or damage to Hardware; and
 - (iii) 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 Authorized Users in connection with the Services; and
- (b) notify EROAD of any unauthorized use of Customer's or Authorized Users' passwords, unauthorized possession of or access to the Hardware or the Services or 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 gives 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 Authorized Users. Customer is solely responsible for granting proper authorization to Authorized Users and EROAD has no responsibility to any person other than Customer under these Terms;
- (f) Customer is authorized 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 Authorized 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 ATTORNEY FEES), ARISING FROM (1) UNAUTHORIZED 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 AUTHORIZED BY CUSTOMER; (4) ANY BREACH OF THESE TERMS OR THE AGREEMENT BY CUSTOMER OR AUTHORIZED USERS; AND (5) 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, the Service will be capable of interoperating with the Hardware so that it can interoperate 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;
- (b) altered by Customer or any other unauthorized 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, 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 unauthorized 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 endeavors 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 WARRANTY DISCLAIMER: ALL EROAD PRODUCTS AND SERVICES ARE PROVIDED "AS IS". WITH THE EXCEPTION OF THE WARRANTIES PROVIDED IN SECTION 6 EROAD MAKES NO OTHER WARRANTIES OR REPRESENTATIONS TO THE CUSTOMER, WHETHER EXPRESS OR IMPLIED, AND TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND AGAINST HIDDEN DEFECTS. WITHOUT LIMITING THE FOREGOING, EROAD DISCLAIMS ANY WARRANTY THAT ANY EROAD PRODUCTS OR SERVICES WILL BE ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED, OR THAT THE USE OF THE EROAD PRODUCTS OR SERVICES WILL BE UNINTERRUPTED. EROAD FURTHER DISCLAIMS ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM EROAD OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

7.3 Third party products or services. If requested by 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 TO CUSTOMER.

7.4 LIMITATION OF LIABILITY: IN NO EVENT WILL EROAD BE LIABLE FOR ANY LOST PROFITS OR LOST



DATA OR INFORMATION OR ANY FORM OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING TORT (INCLUDING NEGLIGENCE), CONTRACT AND BREACH OF WARRANTY, EVEN IF EROAD HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. EROAD'S 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 AMOUNT PAID BY CUSTOMER TO EROAD UNDER THIS AGREEMENT DURING THE SIX MONTHS PRECEDING THE DATE A CLAIM FOR THE LIABILITY ARISES HEREUNDER.

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 Limited.
- 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 license to reproduce EROAD's trade marks in marketing materials in accordance with EROAD's guidelines.
- 8.4 Data.** 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 defense 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 authorizes EROAD to:
- (a) obtain carrier, vehicle, and transportation permit information from Organizations, and to file reports with the Organizations on Customer's behalf in connection with the Services;
 - (b) use, copy, modify, store, disclose and communicate the Data to the extent necessary to enable Customer to use the Services; and
 - (c) disclose Data to third parties where Customer accesses, uses or purchases third party products or services in connection with the Hardware or Services.
- 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 Organization 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.



10. TERM AND TERMINATION

10.1 Term and Renewal. Subject to clauses 10.2 and 10.3:

- (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.

On expiry of the Minimum Contract Term, the Agreement will automatically continue on a month-to-month basis unless terminated under clause 10.3. EROAD may adjust the Fees following the expiry of the Minimum Contract Term on giving Customer 30 days' written notice.

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 by giving EROAD 30 days written notice.

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. PAYMENT SERVICE

11.1 Description of Service. As an additional service, where available, EROAD may on Customer's request and EROAD's approval, facilitate Customer's payment of Highway Taxes through EROAD's payment gateway (the **Payment Service**). When providing the Payment Service, EROAD is acting as a payment facilitator to Customer and not as an agent for the Organization.

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

- (a) provide accurate ACH Transfer information to EROAD; and
- (b) authorize EROAD to withdraw the appropriate Highway Tax amounts from Customer's designated account at the required times.

11.3 Use of Payment Service. Where:

- (a) Customer's Highway Tax obligation has been calculated; and
- (b) Customer has authorized EROAD to initiate payment to the Organization,

then sufficient funds to meet Customer's Highway Tax obligation must be transferred from Customer's designated account into an EROAD account via ACH Transfer. Once the cleared funds are in EROAD's account, EROAD will instruct the Organization to withdraw the appropriate amount for payment of Customer's Highway Tax obligation.

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

- (a) maintain active and accurate ACH authorizations with EROAD;
- (b) maintain sufficient funds in its designated account to cover Customer's Highway Tax obligations; and
- (c) be responsible for, and pay, any penalties or interest to the Organization related to any improper document filing, payment shortage, or late payment.

11.5 Termination of Payment Service. Customer may discontinue the Payment Service at any time by notifying EROAD in writing. EROAD may terminate the Payment Service:

- (a) on 30 days' written notice to Customer for any reason; or
- (b) immediately on written notice to Customer in the event that Customer breaches any of its obligations under the Agreement or these Terms (including this section).

**12. GENERAL**

- 12.1 Notices.** Any notice to be given under these Terms must be in writing and may be delivered personally or sent by email or fax 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 or fax will be deemed to be received when transmitted to the correct email address or fax number 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.** 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.
- 12.3 Entire Agreement.** These Terms and the Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous agreements, understandings, negotiations, discussions, and/or commitments, whether written or oral.
- 12.4 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.
- 12.5 Attorney Fees/Costs.** In the event that a legal proceeding (including an arbitration or an appeal) is commenced or brought in relation to these Terms, the Agreement or any Hardware or Services supplied under the Terms or 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.
- 12.6 Governing Law and Venue.** 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.
- 12.7 Survival.** Clauses 4.8, 4.9, 4.10, 5.4, 7.2, 7.3, 7.4, 8, 9.3, 9.4 and 9.5 will survive termination of the Agreement.

v 4.0 November 2017