

**Terms and Conditions of Agreement
for Trimble 4D Control (T4D) and Monitoring Services**

1 SCOPE OF AGREEMENT

- 1.1** The Supplier is a reseller of monitoring systems and Trimble 4D control (T4D) software that provides the data required to monitor data from various sensors and storage of same. The software is a component of any monitoring project and controls the measurements, manages, analyses the data, and provides decision support to the Customers.
- 1.2** The Customer, through itself and certain affiliated parties specifically described in this agreement, desire to hire and/or buy from the Supplier and the Supplier desires to hire and/or sell certain Equipment and software solutions to the Customer.
- 1.3** The parties have entered this document to:
- (i) set out the standard terms and conditions that will apply to the hire and/or purchase of the T4D software solution by the Customer from the Supplier; and
 - (ii) secure payment and the performance by the Customer of its obligations to the Supplier.

1.4 Definitions

In this document:

Acceptance means confirmation from the Customer verbally, by email or by providing a purchase order to proceed with the offer made by the Supplier in the Quotation.

Affiliate means an entity that controls, is controlled by or under common control with a party.

Agreement means the agreement entered into by the Supplier and the Customer (either solely or with another person) which incorporates this document and any schedules and special conditions, and any other document stated in the Agreement or Quotation to be part of the Agreement.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in Queensland and concludes at 5pm on that day.

Carrier means one or more wireless carriers providing Carrier Services.

Carrier Services means wireless data plan services provided by one or more Carriers, either directly from such Carrier or from the Supplier as part of the Service.

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or otherwise and whether involving a party to the Agreement or a third party.

Confidential Information has that meaning stated in Clause 15 of this Agreement.

Customer shall mean Company or an Affiliate, as the case may be, who has accepted a Quotation from the Supplier pursuant to Clause 2.2 of this Agreement.

Equipment means those items of hardware or equipment specified on an applicable Quotation and to be purchased or hired by the Customer.

GST has the same meaning as in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Implementation and Commissioning Fee shall be the total fee for the setup, implementation and commissioning of the hosted solution provided by the Supplier to the Customer.

Limited Warranty shall mean the Equipment warranty stated in Clause 3 of this Agreement.

Monthly Service Fees shall be the total fees due each month for the Service(s) provided by the Supplier to the Customer, such fees to be specified on an applicable Quotation.

Tax Invoice has the same meaning as in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any Government Agency together with any related interest, penalties, fines and expenses in connection with them.

Quotation is the document submitted by the Supplier to the Customer by which the Supplier offers to provide Equipment and/or Service to the Customer in accordance with this Agreement.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Professional Services means the professional services and associated rates stated in Schedule 1.

Purchase Price as is more fully defined in Clause 3 of this Agreement, shall be the total amount due and owing from the Customer as payment for the Customer's purchase of Equipment under this Agreement.

Purchase Money Security Interest has the meaning given to that term by the PPSA.

RMA shall have the meaning stated in Clause 3.6 of this Agreement.

Scope of Works means the Scope of Works attached to the Quotation (if any).

Service shall mean the specific service offerings specified on an applicable Quotation to be provided by the Supplier to the Customer under this Agreement, along with certain enhancements, to the extent specified in such Quotation, including any Professional Services.

Security Interest in relation to any Equipment that is personal property, has the meaning given to that term by the PPSA.

Software means any software product delivered or made available by the Supplier to the Customer, in object code format only, whether provided with the Service.

Subscription is the Customer's continuing right, during the Subscription Term (as defined below), to use the Service in connection with the service.

Subscription Term of a Service is the term stated in the Quotation, commencing on the date the Supplier installs the Equipment corresponding to such Service, if applicable, and/or makes the Service available. The Subscription Term shall automatically renew for additional periods of one (1) month, and during such renewal period either party may terminate the Subscription Term upon thirty (30) days written notice to the non-terminating party.

Termination Fee as same relates to a Subscription that has been terminated during its initial Subscription Term, shall be equivalent to the Monthly Service Fees payable for such Subscription multiplied by the number of months remaining in the Subscription Term applicable to such Subscription, had the Subscription Term not been terminated early.

1.5 Interpretation

In this document:

- (a) a reference to the Agreement or another document means the Agreement or that other document and any document which varies, supplements, replaces, assigns or novates the Agreement or that other document;
- (b) a reference to a clause, schedule, annexure or attachment is a reference to the clause, a schedule or an annexure to or of the Agreement;
- (c) the schedules, annexures and attachments, if any, form part of the Agreement;
- (d) a reference to a party is a reference to a party to the Agreement;

- (e) a reference to a person includes its successors and permitted assigns, a natural person, corporation, trust, partnership, a body whether incorporated or unincorporated, Government Agency, any other exempt public authority or corporation sole or other entity whether it comprises a separate legal entity;
- (f) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (g) a reference to legislation means that legislation as amended or replaced;
- (h) 'including' and 'includes' are not words of limitation;
- (i) a reference to a time is to that time in the Jurisdiction;
- (j) a singular word includes the plural and vice versa;
- (k) monetary amounts are expressed in Australian dollars;
- (l) a reference to a thing includes a reference to a part of that thing; and
- (m) any consent or approval required under this document must be in writing.

2 QUOTATIONS

2.1 Submission of Quotation(s)

From time to time during the term of this Agreement, the Supplier may submit one or more Quotations. Each such Quotation shall be incorporated into this Agreement. To the extent of any inconsistency between the terms and conditions of a Quotation and any term or condition in this Agreement, the terms of this Agreement shall prevail.

2.2 Acceptance of a Quotation

The parties acknowledge that Acceptance by the Customer shall represent a binding agreement whereby the Supplier offers, and the Customer agrees to purchase or hire the Equipment and purchase the Service subject to the terms and conditions in this Agreement.

3 PURCHASE OF EQUIPMENT

If the Customer purchases Equipment from the Supplier pursuant to this Agreement, the terms of this Clause 3 shall apply to such purchase.

3.1 Title Delivery and Use

The Customer shall use the Equipment for the Customer's internal business use only and solely in connection with the Customer's use of or access to the Service. Risk of loss in and to the Equipment shall pass to the Customer from such time as the Equipment is received by the Customer. The Supplier shall not be liable for any delay in transportation of the Equipment, to the extent that the delay is reasonably beyond the control of the Supplier. The Customer shall be solely responsible for any reasonable costs incurred in connection with shipment. The Customer will pay or reimburse the Supplier for all costs of handling, carriage, duty, taxes (including GST), insurance (if applicable) and other related transport charges in connection with the delivery of the Equipment.

3.2 Purchase Price

The Purchase Price shall be the total purchase price to be paid for the Equipment as set out in the applicable Quotation. The Supplier shall invoice the Purchase Price for the Equipment, as well as any one-time fees set out in the applicable Quotation, upon the earlier of:

- (a) the date upon which such Equipment is installed at the Customer's site, or
- (b) thirty (30) days after the date the Equipment is shipped to the Customer. Billing and payment terms shall be pursuant to Clause 7 of this Agreement.

3.3 Exchange Rate

- (a) The Supplier will cover variations of up to +/-5% of the quoted exchange rate. Any variation greater than +/-5% between the quoted exchange rate (\$0.72 USD) and bank sell exchange rate at date of invoice shall be applied to the Customer's invoice.
- (b) The Customer accepts the bank sell exchange rate applicable at the date of the invoice as notified by the Supplier.

3.4 Security Interest

Title in the Equipment shall pass to the Customer when the Supplier has received full payment of the Purchase Price.

3.5 Deployment and Field Services

- (a) Unless the Customer has purchased installation services pursuant to an applicable Quotation, the Supplier shall be not responsible for installing Equipment. The Customer shall be solely responsible for arranging for the Equipment to be installed on its site.
- (b) In the event the Customer has purchased installation services under an applicable Quotation, the Supplier or its assignee, agent and subcontractor will provide one-time installation (as defined below) of the Equipment purchased. The parties shall each make commercially reasonable efforts to schedule and complete installation within forty-five (45) days of the date the Supplier ships such Equipment to the Customer.
- (c) Installation includes installation of Equipment and other items of Equipment purchased under the Quotation on the Customer's site, pursuant to the Supplier standard installation procedure. Installation shall include only installations performed between 8:00 a.m. and 5:00 p.m., Monday to Friday, local time, excluding public holidays.
- (d) From time to time upon the Customer's request the, the Supplier or its duly authorised agent may perform onsite repair, troubleshooting, investigation, de-installation, re-installation, replacement, or other field services (**Field Services**) for the Customer. Field Services may include, but shall not be limited to, repairing or removing Equipment and/or installing replacement Equipment at the Customer's site, regardless of whether such Equipment is removed or replaced under the Limited Warranty. The Supplier shall invoice, and the Customer shall pay, on a time and materials basis, a fee based on the Supplier's then current standard prices for any Field Services. Such fees shall be invoiced in arrears, on a monthly basis, and shall be in addition to any other charges and fees otherwise due under this Agreement.

3.6 Limited Equipment Warranty

The Supplier warrants that during the Warranty Period, all Equipment provided:

- (a) will be free from defects in materials and workmanship, and
- (b) will substantially conform to the Supplier's specifications for such Equipment (the "Limited Warranty"). This Limited Warranty does not extend to the following events unless Supplier has caused or contributed to such failures:
 - (i) any failure in the Equipment due to accident, abuse, misuse or negligent use of the Equipment;
 - (ii) any failure resulting from use in other than a normal and customary manner under normal environmental conditions and conforming to the Equipment's instructions;
 - (iii) any failure in the Equipment caused by failing to follow prescribed operating maintenance procedures;

- (iv) any failure in the Equipment due to modifications, alterations, additions or changes to the Equipment not made or authorised to be made by the Supplier; or
- (v) damage caused by force of nature, external causes, or act of any third party (other than the Supplier or its duly- authorised representative). This Limited Warranty shall be void and of no force or effect if any Equipment is installed or serviced by any party other than the Supplier or a third-party (including the Customer) authorised and certified by the Supplier to perform such services:
 - (A) the Customer will notify the Supplier in writing via email to support@upgsolutions.com of any Equipment with defects the Customer believes to be covered by the Limited Warranty. Upon receipt of such written notice, the Supplier will first attempt to resolve the defect remotely. In the event such remote troubleshooting fails to cure the defect, and provided the defect complained of is covered by the Limited Warranty, the Supplier shall issue a Returned Material Authorisation ("RMA") number to the Customer.
 - (B) upon issue of the RMA number to the Customer, the Supplier shall ship replacement Equipment to the Customer, and shall include written RMA instructions. The Customer shall promptly return the defective Equipment to the Supplier in accordance with such written RMA instructions.
 - (C) if the defective Equipment is received by the Supplier within 7 days of the Customer receiving the RMA, and provided the Supplier verifies, in its sole reasonable discretion, that the defect in such Equipment is covered by the Limited Warranty, the Supplier will not charge the Customer any additional charges or fees for the replacement Equipment.
 - (D) if the replacement Equipment is received after expiration of the Warranty Period, or if the Supplier determines that the defective Equipment is not covered by the Limited Warranty, the Supplier shall charge the Customer, and the Customer shall pay the Supplier, for the replacement Equipment at the Supplier's then-current standard prices.
 - (E) the Customer shall be liable for any shipping and insurance charges incurred in connection with shipment of the defective Equipment or replacement Equipment (as the case may be).
- (c) This Clause 3 and Clause 12 state the Customer's sole remedies, and the sole liability of the Supplier, arising out of any defect in the equipment supplied.

4 HIRE OF EQUIPMENT

In the event the Customer Hires Equipment from the Supplier pursuant to this Agreement, the Supplier hire terms available for download from www.upgsolutions.com shall apply. To extent of any inconsistency between the terms of this Agreement and the Supplier hire terms and conditions the terms of this Agreement shall prevail.

5 SERVICE

This Clause 5 shall apply to a Quotation by which the Customer purchases one or more Subscriptions to the Service. The Supplier shall be responsible for administering the servers.

5.1 Purchase of Service and Monthly Service Fees

The Supplier shall provide the Service to the Customer, solely for the Customer's internal

business use, for up to the number of nodes and with such enhancements or add-on services as are specifically set forth in each applicable Quotation. The Customer shall begin incurring Monthly Service Fees, and the Supplier shall begin invoicing the Monthly Service Fees, for Service purchased by the Customer upon the earlier of:

- (a) the date upon which the Service is made available to the Customer (which shall be no later than the date upon which any corresponding item(s) of Equipment are deployed), or
- (b) thirty (30) days after the date Equipment corresponding to such Service (if any) is shipped to the Customer. The first month of Service, which may be a partial month, shall be invoiced in arrears; thereafter, each Monthly Service Fee shall be invoiced in advance. Billing and payment terms shall be in accordance with Clause 7 of this Agreement.

5.2 General and Technical Support

General and technical support for the Service is available electronically and via telephone. Electronic requests may be submitted by email to support@upgsolutions.com. Telephone requests may be submitted by calling, 1300 034 653, Monday through Friday from 8:00 a.m. to 6:00 p.m. AEST. The Supplier reserves the right to modify the general technical support services at any time without notice and in its sole discretion; provided, however, the Supplier shall use commercially reasonable efforts not to modify its support for the Service in such a manner as to have a material adverse impact on the Customer's use of the Equipment and/or Service purchased.

5.3 Suspension

The Supplier may suspend or restrict the Service, without liability, if

- (a) the Customer materially breaches its obligations hereunder (provided, however, the Supplier shall provide the Customer with prior written notice of suspension by reason of the foregoing provision);
- (b) the Supplier determines in its sole discretion that the delivery of the Service or the Customer's use of the Service or Equipment is a threat to the normal operation of or otherwise compromises the Supplier network or any network used to provide the Service; or
- (c) the Supplier has reason to believe that the Customer, any of its agents or any third party is abusing the Service or Equipment or using the Service or Equipment fraudulently or unlawfully.

6 TERM AND TERMINATION

6.1 Term and Termination

- (a) Unless earlier terminated pursuant this Clause 6.1, the term of this Agreement shall commence on the date of execution of this Agreement and shall terminate sixty (60) days after expiration or termination of the Subscription Term applicable to the last active Subscription purchased.
- (b) The Customer or the Supplier may terminate this Agreement in the event the other party materially breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days of the date such breaching party receives written notice of its breach from the non-breaching party.
- (c) The Supplier may terminate this Agreement immediately upon written notice to the Customer in the event that any proceeding is brought by or against the Customer under any applicable bankruptcy or insolvency laws, or in the event that the Customer makes an assignment for the benefit of creditors, or in the event that a trustee, administrator or receiver is appointed to administer the business or assets of the Customer.

- (d) In the event this Agreement is terminated, all then-active Subscriptions shall be deemed to have been terminated as well.

6.2 Termination of Subscriptions and Termination Fee

The Customer may terminate a Subscription at any time during the initial Subscription Term by providing the Supplier with written notice of such termination not less than thirty (30) days prior to the effective date of such termination. In the event a Subscription is terminated by the Customer pursuant to this Clause 6.2, or in the event a Subscription is terminated by reason of the Supplier's termination of this Agreement under Clause 6.1, the parties acknowledge that the Supplier will suffer damage by reason of such termination and, therefore, the Customer will pay to the Supplier, as liquidated damages and not as a penalty, the Termination Fee applicable to such terminated Subscription, which fee the parties agree and acknowledge is a genuine pre-estimate of the damage that the Supplier will suffer by reason of such termination.

6.3 Effect of Termination

The provisions of Clauses 6, 7, 8, 9, 10, 12, 13, 14, 15, 16 of this Agreement, and all payment obligations incurred under this Agreement or under any applicable Quotation survive the expiration or termination of this Agreement and any applicable Quotations for any reason.

7 FEES PAYMENTS INVOICING TAXES

- (a) The Customer shall pay all charges and fees for Implementation, Equipment and/or Service purchased by the Customer pursuant to each applicable Quotation in Australian dollar, unless otherwise specified by the Supplier in a Quotation.
- (b) The Supplier shall invoice amounts due under each Quotation to the billing address as is provided in such Quotation. Invoices are due and payable within thirty (30) days from the end of the month in which the invoice is rendered.
- (c) The Supplier does not waive its right to collect the full amount due if the Customer pays late or pays part of the debt recovery and/or invoice, even if the Customer writes the words "Paid in Full" (or similar words) on any correspondence or payment to the Supplier. The Customer shall pay for all reasonable costs of collection, including legal fees, incurred by the Supplier in connection with its collection of amounts due under this Agreement.
- (d) The charges, fees and prices are exclusive of all federal, state and local withholding, excise, sales, use and similar taxes (including goods and services tax (GST), fees and surcharges imposed by any governmental authority. The Customer must pay all such taxes, fees and surcharges arising out of the Customer's purchase of Equipment and/or Service, unless the Customer can show documentation satisfactory to the Supplier that it is exempt from same.
- (e) If GST is payable in connection with any supply made under or in connection with this Agreement, an amount on account of such GST must also be paid by the person receiving the supply as invoiced to that person, subject to receipt by that person of a properly rendered tax invoice.

8 CUSTOMER ACKNOWLEDGEMENTS

8.1 General

The Customer expressly consents to the provision of monitoring services and information as contemplated under this Agreement and the Quotation(s) and in connection with the Customer's use of the Service. The Customer acknowledges:

- (a) the Supplier is not responsible for the terms, conditions, obligations, or performance of or arising under agreements between the Customer and any wireless or cellular network or airtime provider in connection with the Service;
- (b) functionality of the Equipment and/or Service is limited to and by the functionality and limitations of the power supply, wireless networks, carrier services, and the Internet;

- (c) data produced by the Service is capable of being intercepted by third parties without knowledge or permission from the Supplier;
- (d) wireless networks and coverage, satellite coverage, and internet access that are necessary for use and operation of the Equipment and/or Service may be interrupted, terminated or restricted or the quality of the transmission may be diminished at any time. Actual coverage and operation of the Service may depend on system availability and capacity, system and equipment upgrades, repairs, maintenance, modifications and relocation, the Customer's equipment, terrain, signal strength, structural conditions, weather and atmospheric conditions, governmental regulations, suspected fraudulent activities, the Customer interference or obstruction of Equipment, acts of God and other conditions beyond the Supplier's reasonable control.

8.2 Privacy

The Customer acknowledges that use of the Equipment and/or Service may have user privacy implications. Whether and to what extent, a user's privacy rights are implicated may be affected by such things as:

- (a) the use to which the Service is put;
- (b) the information that is gathered by the Service;
- (c) the dissemination of information that is gathered;
- (d) the actions that are taken based upon the information gathered;
- (e) the user's knowledge and/or consent to such monitoring;
- (f) the policies and procedures that have been implemented and communicated by the administrator; and
- (g) current federal and state laws, regulations and constitutional rights applicable to the user.

The Customer must ensure that it obtains all necessary consents from individuals that allow the Supplier to collect and use personal information that the Customer provides to the Supplier in connection with this Agreement.

9 SOFTWARE LICENSE

- (a) All references to "purchase", "sale" of or "selling" Software shall mean the granting of a license set forth in this Clause 9. Subject to the terms and conditions of this Agreement and the payment of all fees required under this Agreement or any applicable Quotation, the Supplier hereby grants to the Customer, under the Supplier's intellectual property rights in and to the applicable Software, a limited, non-transferable, non-exclusive right and license, without the right to sublicense, to use the Software provided with the Equipment and/or Service solely in conjunction with the Customer's use thereof and access thereto, in object code form only, and solely for the Customer's internal business purposes during the term of this Agreement. The Customer receives no title or ownership rights to any Software. Except for the licenses granted in this Clause 9, all right, title and interest in the Software shall remain the exclusive property of the Supplier or its licensors.
- (b) The license set forth in Clause 9 shall not include any right to and the Customer shall not:
 - (i) copy, reproduce, modify or create any derivative work of any Software;
 - (ii) sell, rent, lease, loan, license, sublicense, provide, distribute or otherwise transfer any Software to any third party;
 - (iii) use the Software for third-party training, commercial time-sharing or service bureau use;

- (iv) cause or permit the disassembly, decompilation, or reverse engineering of any Software or otherwise attempt to gain access to the source code of any Software; or
- (v) cause or permit any third party to do any of the foregoing.

10 REPRESENTATIONS AND INDEMNITY

Each party represents and warrants to the other party that:

- (a) such party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it; and
- (b) when executed and delivered by such party, subject to applicable law (if any), this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms. The Customer's use of the Equipment shall comply with all applicable local and foreign laws and regulations, including without limitation U.S. and Australian laws regarding the transmission of technical data and software that is exported or re-exported. The Customer shall not use the Equipment or Service for any unlawful, abusive or fraudulent purpose, including without limitation, in any way that:
 - (i) interferes with the ability of the Supplier to provide products and services to the Customer or to other customers; or
 - (ii) avoids the Customer's obligation to pay for the Equipment and/or Service. The Customer shall not create or use any software programs that automatically activate buttons on the Supplier website or any successor site that the Supplier identifies. The Customer shall not use, duplicate, or disclose any technical data, or any information on the construction or operation of the Equipment or the Service disclosed by the Supplier to the Customer for any purposes other than for the installation, operation or maintenance thereof. The Customer represents and warrants that it will not use, or permit to be used, the Equipment or Service for High Risk Activities. The Customer jointly and severally, shall indemnify and hold harmless the Supplier from any loss or damage to the Customer or any third party resulting from the Customer's misuse of the Equipment and/or Service.

11 COVERAGE AND DATA TRANSMISSION

The Equipment, Service, and the Supplier's continuing obligation to provide same, are dependent on the availability and coverage of wireless networks, and the availability of positioning systems and the Internet, which are owned and operated by third parties. Wireless coverage areas are approximate and do not cover significant portions of Australia. The Supplier will not be responsible for the unavailability, termination or performance degradation of or limits in wireless networks, wireless coverage, positioning systems or the Internet. The Customer shall be solely responsible for obtaining wireless data transmission services under service plan(s) and from such wireless carrier(s) as may be designated by the Supplier, and for maintaining such wireless data transmission services.

12 DISCLAIMER OF WARRANTIES

Except as expressly set forth in this agreement, to the maximum extent permitted by law, the Supplier makes and the Customer receives no representations or warranties, express, implied, statutory or otherwise, with respect to any equipment or service, and the Supplier specifically disclaims all other warranties and representations, including without limitation any implied warranty of merchantability, fitness for a particular purpose or non-infringement, and any warranties arising from a course of dealing or usage of trade. The Supplier does not warrant that use of the equipment or service will be error-free or uninterrupted. Nothing in this Agreement shall be construed as providing or intending to provide any limited warranties to

any customer(s) or end user(s) of customer, except to the extent otherwise set forth in this agreement.

The Supplier's liability in relation to mandatory implied terms is limited, at the Supplier's option, in the case of goods to either:

- (a) replacement or repair of the goods; or
- (b) payment of the cost of replacing or repairing the goods.

In the case of services, to either:

- (a) resupply of the services; or
- (b) payment of the cost of resupply of the services.

13 INTELLECTUAL PROPERTY INDEMNITY

13.1 Indemnification

The Supplier shall indemnify the Customer from and against any finally adjudicated loss, damage, liability or expense on account of any claim(s), and shall defend any suit and dispose of any claim(s) or other proceedings, arising from an allegation that the Customer's use of Equipment and/or Service in accordance with this Agreement infringes any Australian patent, copyright, or other proprietary right. In the event that the Equipment or Service is, or in the Supplier's opinion is likely to be, enjoined due to the type of infringement described in this Clause 13.1, the Supplier, at its option and expense, may procure for the Customer:

- (a) the right under such patent or copyright to use the infringing Equipment or Service;
- (b) modify the infringing Equipment or Service so that they become non-infringing;
- (c) replace the infringing Equipment or Service with functionally equivalent non-infringing products or services; or
- (d) if the Supplier determines that the foregoing alternatives are not reasonably available, accept return of the infringing Equipment or cancellation of the infringing Service, or applicable part thereof, and refund the aggregate payments paid for such Equipment less an amount equal to the total purchase price for such Equipment multiplied by the percentage of the Subscription Term relating to the returned Equipment that had elapsed as of the date of return of such Equipment. The Supplier will not be liable for any costs or expenses incurred without its prior written authorisation.

13.2 Exceptions

Notwithstanding the provisions of Clause 13.1 above, the Supplier will have no liability to the extent that any claim or action would have been avoided but for:

- (a) the combination, operation or use of the Equipment or Service with any other product(s) or service(s) not provided by the Supplier;
- (b) modification of the Equipment or Service after delivery by the Supplier, unless such modification is performed by the Supplier or a duly authorised the Supplier agent and authorised in advance in writing by the Supplier; or
- (c) incorporation of the Equipment or Service into any of the Customer's own product(s) or service(s).

13.3 Entire Liability

The provisions of this clause 13 state the entire liability and obligations of the Supplier and the exclusive remedy of the Customer with respect to any alleged infringement of any patents, copyrights, trademarks or other intellectual property rights by the Equipment or Service, or any part thereof.

13.4 Procedure

The Supplier's indemnification obligations under this clause 13 shall be subject to and conditioned upon the Customer:

- (a) giving the Supplier sole control of any such claim, suit or proceeding or settlement negotiations;
- (b) notifying the Supplier promptly in writing of such claim, suit or proceeding and giving the Supplier authority to proceed;
- (c) at the Supplier's reasonable expense, giving proper and full information and assistance to settle and/or defend any such claim, suit or proceeding; and
- (d) agreeing not to enter into any settlement of such claim, suit or proceeding.

14 LIMITATION OF LIABILITY

Neither party is liable for costs of procurement of substitute products or services, nor for any loss of business, loss of use of data, interruption of business, lost profits or goodwill, or indirect, special, incidental, exemplary or consequential damages of any kind arising out of this agreement or any service order, regardless of the form of action (including negligence) and even if such party has been advised of the possibility of such loss, and notwithstanding any failure of essential purpose of any limited remedy. Each party's liability to the other for any claim for loss or damage made in connection with this Agreement (for contract, tort, under statute or otherwise) is limited to \$5 million. This cap does not apply in the event of:

- (a) death or personal injury;
- (b) fraud;
- (c) breach of third-party intellectual property rights; and
- (d) wilful breach of this Agreement.

15 CONFIDENTIALITY

15.1 Confidential Information.

"Confidential Information" of a party shall mean any information disclosed by that party to the other pursuant to this Agreement or pursuant to any Quotation which is in written, graphic, machine readable or other tangible form and is marked "Confidential", "Proprietary" or in some other manner to indicate its confidential nature. Confidential Information may also include oral information disclosed by one party to the other pursuant to this Agreement or any Quotation, provided that such information is designated as confidential at the time of disclosure and is reduced to writing by the disclosing party within a reasonable time (not to exceed thirty (30) days) after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to the receiving party. The terms and conditions of this Agreement and of each applicable Quotation shall be considered Confidential Information of the Supplier.

15.2 Nondisclosure

Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as set forth in this Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement, which shall in no event be less than reasonable care. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorised disclosure of the other party's Confidential Information.

15.3 Exceptions

Notwithstanding the above, neither party shall have liability to the other about any Confidential Information of the other which the receiving party can prove:

- (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;
- (b) was known to the receiving party, without restriction, at the time of disclosure;
- (c) is disclosed with the prior written approval of the disclosing party; or
- (d) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Notwithstanding anything in this Agreement or any applicable Quotation to the contrary the Supplier may disclose to the Customer any Confidential Information under any applicable Quotation, without liability or obligation hereunder.

15.4 Remedies

Any breach of the restrictions contained in this Clause 15 is a breach of this Agreement, which may cause irreparable harm to the non-breaching party. Any such breach shall entitle the non-breaching party to injunctive relief in addition to all legal remedies.

16 PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)

- (a) The Supplier retains title in the Equipment delivered under this Agreement until the Customer has paid:
 - (i) the Purchase Price of the Equipment; and
 - (ii) all other money owed by the Customer to the Supplier.
- (b) The Supplier and the Customer acknowledge and agree that this clause:
 - (i) secures the Purchase Price of the Equipment; and
 - (ii) creates a Purchase Money Security Interest in the Equipment.
- (c) The Supplier and the Customer further acknowledge and agree that this Agreement may also create a Security Interest in the Equipment that is not a Purchase Money Security Interest.
- (d) The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier and arising from any act or omission of the Customer in connection with the Supplier exercising its rights under this clause or attempting to do so.
- (e) The parties acknowledge and agree that the PPSA provisions contained in this Agreement (including confidentiality obligations) also apply to the transactions contemplated by this document and the Quotation.

17 NOTICES

All notices given pursuant to the Agreement must be in writing and will be properly served if delivered personally, posted, sent by facsimile or e-mailed to the other party at the address or facsimile number or email address set out in the Agreement or as otherwise notified in writing by the intended recipient.

A notice sent by post will be deemed to have been given on the third Business Day after posting except in the case of international post, which will be deemed to have been given on the fifth Business Day after posting where sent by airmail.

A notice sent by facsimile transmission will be deemed to have been given upon confirmation by the sending machine of successful transmission of the total number of pages of the notice.

A notice sent by e-mail will be deemed to have been given on confirmation that the email transmission has been received.

A facsimile or email sent after 17.00hrs on a Business Day or on a day which is not a Business Day will be deemed received at 09.00hrs on the following Business Day.

18 GENERAL

18.1 Benefit of Agreement held on trust

The Customer accepts the benefit of the Agreement on behalf of its Associated Entities and Personnel and holds the benefit of the Agreement on trust for its Associated Entities and Personnel and may enforce the Agreement in its own name and in the name of (or for the benefit of) any of its Associated Entities or Personnel.

18.2 Severability

If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. If the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then:

- (a) such provision shall be excluded from this Agreement,
- (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and

the balance of the Agreement shall be enforceable in accordance with its terms. Any waiver by either party of a breach of any provision of this Agreement will not operate as or be construed to be a waiver of any other breach of that or any other provision of this Agreement.

18.3 No merger

The rights and obligations of the parties under the Agreement do not merge on completion of any transaction contemplated by the Agreement.

18.4 No Waiver

Time is of the essence of the Agreement, except that no delay by either party in exercising any right or power will operate as a waiver of that right or power. Nor will any single or partial exercise of any right or power by either party preclude any other or further exercise of that right or power.

18.5 Variation

A variation of any term of the Agreement must be in writing and signed by the parties.

18.6 Transfer Assign or Delegate Agreement

- (a) The Customer shall not transfer, assign or delegate this Agreement or any Quotation, or any rights or obligations, in whole or in part, whether voluntarily, by operation of law or otherwise, without the prior written consent of the Supplier. Any such purported assignment without such prior written consent shall be null and void. Subject to the foregoing, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties' permitted successors and assigns.
- (b) Any modifications of this Agreement must be in writing and signed by the duly authorised representative of the Customer and an authorised representative of the Supplier; provided, however, that the Supplier may modify this Agreement from time to time as reasonably necessary to comply with applicable laws and regulations. The Supplier shall provide the Customer with written notice of such modifications as is reasonably practicable.

18.7 Further actions

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to the Agreement and the transactions contemplated by it.

18.8 Survival

Any indemnity or any obligation of confidence under the Agreement is independent and survives termination of the Agreement. Any other term by its nature intended to survive termination of the Agreement survives termination of the Agreement.

18.9 Entire agreement

This Agreement and all Quotations constitute the entire agreement between the Supplier, and the Customer and supersedes all previous agreements, understandings, statements, communications, representations and proposals, whether oral or written, between the Customer and the Supplier with respect to the subject matter hereof.

18.10 Counterparts

The Agreement may be executed in any number of counterparts.

18.11 Governing Law

This Agreement will be governed by and construed in accordance with the laws of Queensland. Each Party submits to the non-exclusive jurisdiction of the courts of Queensland.

18.12 Force Majeure

Notwithstanding anything else in this Agreement and excluding obligations to pay fees when due hereunder, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of such party, including without limitation, failure of a wireless network or the Internet, strikes, lockouts or other labour disputes, riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, acts of terrorism, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, nuclear disasters, or default of a common carrier.

18.13 Use of Customer Data

Use of the Customer data arising from the Service shall be governed by the Supplier Privacy Policy as may be modified from time to time, available upon request.

18.14 Independent advice

Each party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.



SCHEDULE 1 - PROFESSIONAL SERVICES

Professional Services			
No	Description	Unit	Price Ex GST
SVCE	Equipment Service repair	Hourly	\$150.00
SWDEV	Software Development	Day	\$2,000.00
SOMAIN	Software Maintenance	Annual	\$3,800.00
PROMMAN	Project Management Services	Day	\$2,000.00
ALLOW	Allowance and incidentals (apply for overnight installations)	Day	\$100.00
TRAVEL	Travel	Hourly	\$110.00
ONSUPP	Ongoing support	Hourly	\$150.00
ACCOM`	Accommodation (capped)	Day	\$200.00
TRAV-OTHER	Other travel charged at cost + 10 %	-	-

- Install assumes 2 Supplier Technicians and includes travel time