

# CLIENT VEROCARD ADMINISTRATION SOFTWARE END-USER LICENSE AGREEMENT

## \*\*\* IMPORTANT INFORMATION - PLEASE READ CAREFULLY \*\*\*

The Client VeroCard Administration Software contains computer programs and other proprietary material and information of VeroGuard Systems Pty Limited (**Supplier**), the use of which is subject to and expressly conditioned upon acceptance of this End User License Agreement (**EULA**). The Client and each Authorised User's use of the Client VeroCard Administration Software is subject to the terms and conditions as outlined in this EULA.

This EULA is a legally binding document between you (meaning the individual person or the entity that the individual represents that has obtained the Client VeroCard Administration Software for its internal productive use and not for outright resale) (**Client**) and the Supplier to use the Client VeroCard Administration Software. Unless the Supplier agrees otherwise in writing, this EULA governs Client's use of the Client VeroCard Administration Software, except to the extent all or any portion of the Client VeroCard Administration Software is: (a) the subject of a separate written agreement set forth in a quotation issued by the Supplier; or (b) governed by a third party licensor's terms and conditions. Capitalised terms have meaning stated in the EULA.

By clicking on the "Agree" or "Accept" or similar button at the end of this EULA, or proceeding with the installation, downloading, use or reproduction of the Client VeroCard Administration Software, or authorising any other person to do so, you are representing to the Supplier that you are (i) authorised to bind the Client; and (ii) agreeing on behalf of the Client that the terms of this EULA will govern the relationship of the parties with regard to the subject matter in this EULA and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this EULA. If you do not have authority to agree to the terms of this EULA on behalf of the Client, or do not accept the terms of this EULA on behalf of the Client, click on the "Cancel" or "Decline" or other similar button at the end of this EULA and/or immediately cease any further attempt to install,

If the Client does not agree to the terms of this EULA, you may not use the Client VeroCard Administration Software.

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## 1. DEFINITIONS

**Accessible Code** means source code that is unprotected and accessible;

**Authorised User** means a person who accesses and uses the Client VeroCard Administration Software under this EULA;

**Client VeroCard Administration Software** means the software product which requires acceptance of this EULA, and any copies made by or on behalf of the Client and all Documentation for the foregoing, and includes any third party software, which may contain Accessible Code or Protected Code licensed by the Supplier from a third party and embedded in a VeroCard;

**Contracted Services** has the same meaning as in the Standard Terms & Conditions;

**Documentation** means the then-current, generally available, written user manuals and online help and guides for Client VeroCard Administration Software provided by the Supplier which may include associated media, printed materials, "online" or electronic documentation and Internet-based services;

**Fees** has the same meaning as in the Standard Terms & Conditions;

**Maintenance** means the provision by the Supplier to the Client, under the Maintenance Agreement, of Client VeroCard Administration Software updates and/or enhancements made generally available to customers from time to time and online technical support (and, where applicable, phone support) for the sole purpose of addressing technical issues relating to the use of the Client VeroCard Administration Software ;

**Maintenance Agreement** means the then-current Client VeroCard Administration Software Maintenance Agreement posted on the applicable Supplier website, currently located at [www.veroguard.com.au](http://www.veroguard.com.au);

**Standard Terms & Conditions** means the then-current Standard Terms & Conditions of supply of VeroCards and the Contracted Services posted on the applicable Supplier website, currently located at [www.veroguard.com.au](http://www.veroguard.com.au);

**Protected Code** means any source code that is protected against access by the Supplier or a third party and is not accessible under this EULA.

**Purchase Order** means a purchase order placed by the Client for the supply of the Contracted Services in accordance with a Quote;

**Quote** means one or more documents issued by the Supplier specifying the Contracted Services and the VeroCards that the Client seeks to obtain from the Supplier, the related pricing and sufficient other information to complete the transaction. Each Quote incorporates this EULA by reference;

**User License** means a license granted under this EULA to the Client to permit an Authorised User to use the Software as part of its use of the VeroCard;

**VeroCard** means each variant of the device produced by the Supplier and supplied to the Client to enable Authorised Users to access the Contracted Services; and

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## 2. GRANT OF LICENSE

### 2.1 Grant

Subject to the Client's compliance with this EULA and the Standard Terms & Conditions and the payment by the Client of all Fees, the Supplier grants each of the Client and each person nominated by the Client as an Authorised User the non-exclusive right to use the Client VeroCard Administration Software as part of its use of the VeroCard and the Contracted Services, subject to the following clauses.

### 2.2 Authorised Users

The license granted in clause 2.1 is subject to the condition that the Client must ensure the maximum number of VeroCards used by Authorised Users accessing and using the Client VeroCard Administration Software is equal to the number of VeroCards for which the Fees have been paid to the Supplier.

### 2.3 Scope

Each license granted by the Supplier under this EULA is, unless otherwise specified in this EULA or agreed by the Supplier in writing, worldwide, non-exclusive, non-transferable and non-sub-licensable.

### 2.4 Duration

Subject to the terms of this EULA and unless terminated earlier in accordance with this EULA, the term of the license lasts in relation to each VeroCard until such time as an Authorised User ceases using the VeroCard in conjunction with the Contracted Services.

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## 3. FEES

### 3.1 Payment of Fees on time

The Client must pay all Fees by their due date.

### 3.2 Failure to pay Fees on time

Failure by the Client to pay Fees by the due date will result in the immediate termination of the licenses granted under this EULA.

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## **4. RESERVATION OF RIGHTS AND OWNERSHIP**

- (a) The Supplier reserves all rights not expressly granted to the Client in this EULA.
- (b) The Client VeroCard Administration Software and all copies are protected by copyright and other intellectual property laws and treaties.
- (c) The Supplier or relevant third parties own the title, copyright, and other intellectual property rights in the Client VeroCard Administration Software and all subsequent copies of the Client VeroCard Administration Software.
- (d) The Client VeroCard Administration Software is licensed under this EULA, not sold to the Client, and the Client does not acquire any rights of ownership in the Client VeroCard Administration Software.

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## **5. SUPPORT AND MAINTENANCE**

### **5.1 Additional Client VeroCard Administration Software / services**

This EULA applies to updates, revisions, supplements, add-on components, or Internet-based services components, of the Client VeroCard Administration Software that the Supplier may remotely upload to the VeroCards from time to time.

### **5.2 Support and upgrades**

Any support services provided by the Supplier will be substantially as described in separate written materials provided by the Supplier to the Client and may be the subject to the payment of additional fees.

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## **6. CLIENT OBLIGATIONS**

### **6.1 Positive obligations**

The Client must at all times:

- (a) ensure that only Authorised Users use the VeroCards and that the Authorised Users use the VeroCards only in accordance with the terms and conditions of this EULA; and
- (b) without the specific written consent of the Supplier, ensure that the VeroCards are not used for rental, timesharing, subscription service, hosting or outsourcing.

### **6.2 Negative obligations**

The Client must not, whether through negligent act or omission or without the prior written consent of the Supplier, which may be withheld at the Supplier's discretion and include certain conditions:

- (a) decompile, reverse engineer, disassemble, modify, adapt, create derivative works from, or otherwise attempt to derive source code, any portion of the Client VeroCard Administration Software;
- (b) directly or indirectly access or use any Client VeroCard Administration Software independently of a VeroCard;
- (c) sell, sublicense, redistribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form of the Client VeroCard Administration Software or any data/information not owned by the Client which is provided to Client through the Client VeroCard Administration Software to a person who is not an Authorised User;
- (d) vary or amend the Client VeroCard Administration Software (including any Protected Code or Accessible Code);
- (e) except as otherwise permitted in this EULA, publish, promote, broadcast, circulate or refer publicly to the Supplier name, trade name, trademark, service mark or logo;

- (f) commit any act or omission the likely result of which is that the Supplier or any of its third party suppliers' reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on the Supplier's interests; or
- (g) copy or embed elements of the Accessible Code contained in the Client VeroCard Administration Software into other applications.

### **6.3 Protection Mechanisms**

The Client VeroCard Administration Software may include license protection mechanisms that are designed to manage and protect the intellectual property rights of the Supplier and its third party suppliers. The Client must not modify or alter those features to try to defeat the Client VeroCard Administration Software use rules that the license protection mechanisms are designed to enforce. Any such attempt by the Client will result in the immediate termination of any license granted under this EULA.

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## **7. NOTIFICATION**

### **7.1 General**

If the Client discovers it has breached any of its obligations under this EULA and, in particular, the obligations in clause 6, the Client must immediately report the breach to the Supplier in writing.

### **7.2 Penalties**

Where a breach involves the use and distribution of the Client VeroCard Administration Software, the Supplier and/or any third party owner of any part of the Client VeroCard Administration Software will be entitled, in addition to any other right or claim that the Supplier or any third party owner of the Client VeroCard Administration Software may have against Client, to retroactively charge Client, in addition to any other Fees payable by Client under this EULA, a fee calculated based on the number of prohibited uses times the prices that the Supplier charges for the Contracted Services.

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## **8. INVESTIGATION OF UNAUTHORISED USE AND DISTRIBUTION**

If the Supplier reasonably suspects that:

- (a) the VeroCards supplied to the Client have been distributed to or obtained by any person or party who is not an Authorised User without the Supplier' prior written consent;
- (b) the Client VeroCard Administration Software is being varied or accessed or used independently of the VeroCards; or
- (c) the Client is otherwise breaching a term of this EULA and, in particular, its obligations under clause 6,

the Supplier reserves the right to require the Client to provide an unqualified certificate executed by the Client's auditor verifying compliance with the terms of this EULA. Such requests must be made no more frequently than once per calendar year. If an unqualified certificate is not received by the Supplier within 30 calendar days of being required, it will be considered that a breach of this EULA has occurred allowing the Supplier to terminate the licenses granted under this EULA.

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## **9. TERMINATION**

### **9.1 Right to terminate**

Without prejudice to any other rights and in addition to any other termination rights in this EULA, the Supplier may terminate this EULA, and the Client must immediately ceasing using the Contacted Services and return the VeroCards to the Supplier, if the Client fails to comply with the terms and conditions of this EULA.

## **9.2 Termination due to decommissioning**

Any decommissioning of the VeroCards or the Client VeroCard Administration Software by the Client will result in the immediate termination of this EULA between the Supplier and the Client.

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## **10. INFRINGEMENT INDEMNIFICATION**

### **10.1 Infringement by Client VeroCard Administration Software**

If the Client VeroCard Administration Software becomes, or in the opinion of the Supplier may become, the subject of a claim of infringement of any third party's intellectual property rights, the Supplier may, at its option and in its discretion:

- (a) procure for the Client the right to use the Client VeroCard Administration Software free of any liability;
- (b) replace or modify the Client VeroCard Administration Software to make it non-infringing; or
- (c) refund any Fees related to the VeroCards paid by the Client.

The foregoing states the sole liability of the Supplier and the exclusive remedy of the Client for any infringement of intellectual property rights by the Client VeroCard Administration Software or any other items provided by the Supplier under this EULA.

### **10.2 Client's use**

The Client will indemnify and hold harmless the Supplier against all costs, expenses, losses and claims made against the Supplier as a result of any infringement of a third party's intellectual property rights arising from the Client's or its Authorised User's modification to the Client VeroCard Administration Software.

### **10.3 Third party software**

The Client acknowledges and agrees that, if the Client breaches this EULA and the Supplier or any third party owner of the Client VeroCard Administration Software suffers any loss, damage cost or expense directly or indirectly in connection with the breach, the Supplier or the relevant third party owner of the Client VeroCard Administration Software may bring an action directly against the Client.

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## **11. EXCLUSION OF WARRANTIES**

To the maximum extent permitted by applicable law in the jurisdiction in which the Client VeroCard Administration Software is supplied or Maintenance provided, the Supplier and its third party suppliers provide the Client VeroCard Administration Software and any Maintenance AS IS AND WITH ALL FAULTS, and, except otherwise expressly contained in the EULA, hereby disclaim all other warranties and conditions, whether express, implied or statutory.

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## **12. LIMITATION OF LIABILITY**

### **12.1 Non-excludable warranties**

The Client may have remedies against the Supplier imposed by law or statute which cannot be excluded by the Supplier and its third party suppliers.

### **12.2 If legal remedies**

To the extent the Client has any legal remedies against the Supplier or its third party suppliers, then, to the fullest extent permitted by law, the Supplier and its third party suppliers' liability is limited:

- (a) at the Supplier' option, to:
  - (i) in the case of the Client VeroCard Administration Software:

- (A) repairing or replacing the Client VeroCard Administration Software; or
  - (B) the cost of such repair or replacement; and
- (ii) in the case of Maintenance services:
  - (A) re-supply of the Maintenance services; or
  - (B) the cost of having the Maintenance services supplied again; or
- (b) if the above limitation is not applicable, to the greater of the actual damages the Client incurs in reasonable reliance on the Client VeroCard Administration Software up to the amount actually paid by the Client for the Contracted Services using the VeroCards in the 12 months prior to the date the legal remedy arose.

### **12.3 Limitation of Liability for other Losses**

Subject to clause 12.1, notwithstanding any damages the Client might incur for any reason whatsoever to the maximum extent permitted by applicable law, the entire liability of the Supplier and any of its third party suppliers under any provision of this EULA and the Client's exclusive remedy will be limited to the greater of the actual damages the Client incurs in reasonable reliance on the Client VeroCard Administration Software up to the amount actually paid by the Client for the Client VeroCard Administration Software.

### **12.4 Consequential Loss**

Notwithstanding anything else in this clause 12, to the maximum extent permitted by applicable law, in no event will the Supplier or its third party suppliers be liable for any special, incidental, punitive, indirect or consequential damages whatsoever arising out of or in any way related to the use of or inability to use the Client VeroCard Administration Software, the provision of or failure to provide Maintenance or other services, information, software and related content through the Client VeroCard Administration Software or otherwise arising out of the use of the Client VeroCard Administration Software, or otherwise under or in connection with any provision of this EULA, even in the event of the fault, tort (including negligence), misrepresentation, strict liability, breach of contract or breach of warranty of the Supplier or any third party supplier and even if the Supplier or any third party supplier has been advised of the possibility of such damages.

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## **13. PUBLICITY RIGHTS**

The Client grants the Supplier the right to include Client as a customer in promotional material. The Client can deny the Supplier this right at any time by submitting a written request via email to [info@veroguard.com.au](mailto:info@veroguard.com.au), requesting to be excluded from the promotional material. Requests made after purchasing may take 30 calendar days to process.

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## **14. AMENDMENT**

This EULA may not be amended except with the written agreement of the Supplier whose consent may be withheld in its complete discretion without any requirement to provide reasons.

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## **15. ASSIGNMENT**

- (a) The Client may assign this EULA to:
  - (i) succeeding parties in the case of a merger, acquisition or change of control; or
  - (ii) if the Client is a supplier to a government agency,
    - provided that in each case:
      - (iii) the Supplier is notified in writing within 30 days of such assignment;

- (iv) the assignee agrees to be bound by the terms and conditions contained in this EULA; and
  - (v) upon such assignment the assignee makes no further use of the software licensed under this EULA.
- (b) The Supplier may assign its rights and obligation under this EULA without consent of the Client.
- (c) Any permitted assignee will be bound by the terms and conditions of this EULA.

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## **16. GOVERNING LAW AND EXCLUSIONS**

### **16.1 Applicable Law**

This EULA is governed by the copyright laws of Victoria, Australia. Unauthorised breaches of these laws or any portion of it may result in civil and criminal penalties, and will be prosecuted to the maximum extent possible under law. The parties irrevocably and unconditionally submit to the laws and exclusive jurisdiction of the courts of Victoria.

### **16.2 Arbitration**

Except in circumstances where a party seeks urgent injunctive relief, before commencing any court proceedings, if any disputes arises under this EULA the parties will negotiate in good faith to resolve the dispute and if the dispute has not been resolved within 60 calendar days by the relevant parties using their best efforts to resolve the dispute, the dispute will be referred to mediation that will be conducted by a single mediator. The mediator is to be appointed by the President of the Law Society of Victoria within 10 Business Days of request for appointment by one Party to the other.

### **16.3 Mediation**

During the mediation:

- (a) the parties may not be represented by legal practitioners;
- (b) the mediator will determine the process for mediation; and
- (c) the costs of the mediation will be shared equally by the parties.

### **16.4 Exclusion of UN Convention**

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this EULA.

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## **17. ENTIRE AGREEMENT AND SEVERABILITY**

This EULA (including any addendum or amendment to this EULA which is included with the Standard Terms & Conditions) is the entire agreement between the Client and the Supplier relating to the Client VeroCard Administration Software and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Client VeroCard Administration Software or any other subject matter covered by this EULA. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

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## **18. SURVIVAL**

Clauses 4, 5, 7, 9, 10, 11, 12, 13, 16 and 17 survive any termination of this EULA.

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## **19. QUESTIONS**

Should you have any questions concerning this EULA, or if you desire to contact the Supplier for any reason, please contact the Supplier at [www.veroguard.com.au](http://www.veroguard.com.au).