

STANDARD TERMS & CONDITIONS

These Standard Terms & Conditions are the terms and conditions for supply of the Contracted Services by VeroGuard Systems Pty Limited (ACN 617 573 001) (**Supplier**) to a customer (**Client**) under an executed Services Schedule.

Each Services Schedule and Purchase Order incorporates these Standard Term & Conditions by reference.

These Standard Terms & Conditions may only be varied by the Supplier and the Client documenting the variations as a Special Condition in the Services Schedule.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Agreement, unless the contrary intention appears from the context:

Agreement has the meaning in clause 2.3;

Business Day means any day (not being a Saturday or Sunday) on which banks are open for general banking business in Victoria;

Call Out means each time, other than as part of the Integration Works or the Client VeroCard Administration Software Upload, that the Supplier is required to attend the Client's premises to undertake work to enable the Contracted Services to continue to be provided;

Call Out Fee means a fee payable for each Call Out calculated on the basis set out in clause 5 of the Services Schedule;

Call Out Quotation has the meaning in clause 12.2;

Client means the person who executes a Services Schedule;

Client Content means any of the Client's, or the Client's Users', files, documents, recordings, and other information that is uploaded to the Client's account for storage, or used, presented or shared with third parties in connection with the Client VeroCards;

Client Data includes any passwords, usernames, information, records, files, codes and other software provided to the Supplier by the Client;

Client IP means all Intellectual Property Rights held by the Client at the date of the Agreement or developed by the Client subsequently through activities unrelated to the subject matter of the Agreement;

Client Personnel means the officers, employees, agents, representatives, Sub-Contractors and consultants of the Client;

Client Representative means the representative of the Client identified in Item 3 of clause 1 of the Services Schedule who is appointed as its agent to carry out the functions allotted to the Client Representative under the Agreement, or such other person as the Client notifies to the Supplier from time to time;

Client User means each Client Personnel who is provided with a Client VeroCard and is authorised by the Client to make a Client VerolD Acquisition for the purpose of accessing the Contracted Services;

Client User Own Device means each computer, pad or phone to be used by a Client User in conjunction with their Client VeroCard to access the Contracted Services;

Client User VerolD means the VerolD assigned to a Client User in a Client VerolD Acquisition;

Client VeroCard Activation means the individual activation of each Client VeroCard by a Client User in the manner described in the process posted on the applicable Supplier website, currently located at www.veroguard.com.au;

Client VeroCard Activation Fee means the fee, if any, that is payable by the Client for each Client VeroCard Activation, as set out in clause 5 of the Services Schedule;

Client VeroCard Administration Software means software produced and owned by the Supplier that enables the Client to remotely control the administrative rights of the Client VeroCards;

Client VeroCard Administration Software Fee means the fee, if any, that is payable by the Client for the Client VeroCard Administration Software Upload, as set out in clause 5 of the Services Schedule;

Client VeroCard Administration Software Upload means the uploading by the Supplier of the Administration Software onto the Nominated Client Server in the manner described in the process posted on the applicable Supplier website, currently located at www.veroguard.com.au;

Client VeroCard Defect Notification has the meaning in clause 13.1(a);

Client VeroCard Delivery Fee means the fee, if any, payable for the delivery of the Client VeroCards to the Client, as set out in clause 5 of the Services Schedule;

Client VeroCard Loss Notification has the meaning in clause 13.1(b);

Client VeroCard Loss Replacement means the replacement of a Client VeroCard that has been lost by the Client or a Client User in accordance with clause 13.3(a);

Client VeroCard Loss Replacement Fee means the fee payable for each Client VeroCard Loss Replacement, as set out in clause 5 of the Services Schedule;

Client VeroCard Quantity means the quantity of VeroCards that the Client orders under the Agreement, as set out in Item 8 of clause 1 of the Services Schedule;

Client VeroCard Unit Fee means the fee, if any, payable for each Client VeroCard, as set out in clause 5 of the Services Schedule;

Client VeroCard Usage Fee means the monthly fee payable by the Client to the Supplier for each VeroCard, as set out in clause 5 of the Services Schedule;

Client VeroCard Usage Fee Adjustment Formula means the formula to be used to adjust the Client VeroCard Usage Fee under clause 9.9(b) as set out in Item 12 of clause 1 of the Services Schedule;

Client VeroCard Usage Fee Minimum Payment Period is the minimum period of months that the Client must pay the Client VeroCard Usage Fee to the Supplier, as set out in Item 11 of clause 1 of the Services Schedule;

Client VeroCards means VeroCards to be supplied to the Client under the Agreement;

Client VerolD Acquisition means the process of confirming a Client User's credentials for identity to an identity assurance level required by the Client and conforming to the Australian Government Digital Identity Proofing levels, for the purpose of the Client User gaining access to resources of the Client by authenticating with the Client VeroCard issued to the Client User after binding the Client VerolD to that Client VeroCard. A secure enrolment record will be created for that purpose. The process is posted on the applicable Supplier website, currently located at www.veroguard.com.au;

Client VerolD Acquisition Fee means the fee, if any, that is payable by the Client for each Client VerolD Acquisition, as set out in clause 5 of the Services Schedule;

Confidential Information means the Agreement, the VeroCards, the Contracted Services and the Intellectual Property Rights and any information, documentation, trade secrets, know-how, scientific, technical, device, market, pricing (including the Fees) and information relating to the supply of the Client VeroCards and the current or future business interests, methodology or affairs of a Party (or any Related Body Corporate of a Party) that:

- (a) is reasonably regarded as confidential or which is identified as being confidential, but excluding information that is in the public domain otherwise than by breach of obligations owed by the recipient Party or third parties to the disclosing Party; and
- (b) which is disclosed to the recipient Party or third parties by the disclosing Party;

Contracted Services means the specific services to be provided by the Supplier to the Client under the Agreement using the Client VeroCards, as described in clause 2 of the Services Schedule;

Contract IP means all Intellectual Property Rights and Improvements created, discovered or coming into existence, for the purposes of, or in connection with the provision of Client VeroCards under the Agreement;

Corporations Act means the *Corporations Act 2001* (Cth);

Dispute has the meaning in clause 25.1;

Documentation means any documentation and manuals supplied by the Supplier to the Client or the Client Users from time to time;

Early Termination Fee means a fee by the Client to the Supplier if the Contracted Services cancelled by the Client under clause 24.2 prior to the completion of the Client VeroCard Usage Fee Minimum Payment Period, as set out in clause 5 of the Services Schedule;

Embedded VeroCard Software means object code software deployed onto each Client VeroCard prior to delivery to the Client;

End User License means each of the

- (a) the then-current end user licence agreement for the VeroCard Software (as current from time to time) as posted on the applicable Supplier website, currently located at www.veroguard.com.au; and
- (b) the then-current end user licence agreement for the Client VeroCard Administration Software (as current from time to time) as posted on the applicable Supplier website, currently located at www.veroguard.com.au;

Fees means each of:

- (a) the Integration Works Fee;
- (b) the Client VeroCard Unit Fee;
- (c) the Client VeroCard Administration Software Fee;
- (d) the Client VeroCard Delivery Fee;
- (e) the Client VeroID Acquisition Fee;
- (f) the Client VeroCard Activation Fee;
- (g) the Client VeroCard Usage Fee;
- (h) the Client VeroCard Loss Replacement Fee;
- (i) the Early Termination Fee;
- (j) the Training Fee; and
- (k) the Call Out Fee,

as set out in clause 5 of the Services Schedule;

Force Majeure means any event which:

- (a) is beyond the reasonable control of the Party claiming force majeure;
- (b) is not reasonably foreseeable by Law;
- (c) causes or results in prevention of the performance by the affected Party of any of its obligations under the Agreement;
- (d) does not result from the fault or negligence of the Party claiming force majeure; and
- (e) which through the exercise of reasonable endeavours cannot be avoided, overcome or remedied by the affected Party; and
- (f) includes (without limitation) the following:
 - (i) any act of God, including without limitation, cyclone, earthquake, or other natural physical disaster;
 - (ii) fire, flood, ground subsidence;
 - (iii) strike, lockout, labour dispute or other industrial action by workers or employees which is industry-wide and not confined to the Site;
 - (iv) an act of a public enemy including terrorism, war or hostilities whether declared or undeclared; or
 - (v) revolution or any other unlawful act against public order or authority;

GST means a goods and services tax imposed by the GST Law;

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

GST Law means the GST Act and associated legislation, regulations and laws;

Insolvent means, in respect of a Party, that:

- (a) it stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts or is otherwise unable to pay its debts when they fall due;
- (b) it is insolvent within the meaning of section 95A of the Corporations Act;
- (c) it fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (d) a receiver, manager, administrator, trustee or similar official is appointed over all or substantially all of its assets or undertakings;
- (e) an application (not being withdrawn or dismissed within 21 days) or order is made for its winding up or dissolution;
- (f) a resolution is passed by it or any steps are taken by it to pass a resolution for the winding up or dissolution of that Party; or
- (g) except for the purpose of solvent reconstruction or amalgamation, it enters a scheme of arrangement or composition with creditors;

Intellectual Property Rights means all present and future rights to intellectual property of every kind, including any Improvements, trade marks (whether registered or common law trade marks), licences, branding, business names, domain names, designs, copyright, inventions, discoveries, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data, formulae, any corresponding intellectual property rights at Law and any rights in respect of them;

Integration Works means the works the Supplier is required to undertake to connect the Clients IT systems to the VeroGuard System to enable the provision of the Contracted Services, as detailed in clause 4 of the Services Schedule;

Integration Works Fee means the fee agreed between the Supplier and the Client for the carrying out of the Integration Works, as set out in Schedule 5;

Law means:

- (a) Commonwealth and Victorian legislation including regulations, by-laws and other subordinate legislation;
- (b) guidelines of the Commonwealth, Victoria and local governments with which the Client is legally required to comply; and
- (c) common law and equity;

Nominated Client Server means the server owned or used by the Client to operate the IT systems of the Client that the Client nominates for the purpose of interaction with the VeroGuard System;

Parties means the Client and the Supplier and **Party** means either one of them;

Patents means PCT patent application with authorised number PCT/AU/2004/001663 with global priority date 26 November 2003, the provisional patent upon which the PCT patent application is based and any international applications and registrations in any part of each of the Territories based on the Patents including any future improvements, enhancements, amendments or variations to them;

Purchase Order means an order placed by the Client for the supply of the Contacted Services in accordance with a Services Schedule under clause 8 in accordance with clause 6 of the Services Schedule;

Related Body Corporate has the meaning given in section 50 of the Corporations Act;

Release means an upgrade of licensed Software (or any part of it) provided for the principal purpose of substantially correcting errors or defects in the licensed Software but which is not a new Version;

Related Document means each of the following documents:

- (a) these Standard Terms & Conditions;
- (b) each End User License; and
- (c) each Software Maintenance Agreement

Services Schedule 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;

Software means (as applicable):

- (a) the Client VeroCard Administration Software; and
- (b) the VeroCard Software,

and all Releases and Versions of any Software;

Software Maintenance Agreement means each of:

- (a) the then-current software maintenance agreement for the VeroCard Software (as current from time to time) as posted on the applicable Supplier website, currently located at www.veroguard.com.au; and
- (b) the then-current software maintenance agreement for the Client VeroCard Administration Software (as current from time to time) as posted on the applicable Supplier website, currently located at www.veroguard.com.au;

Special Conditions means the special conditions (if any) set out in Schedule 9;

Start Date means the date which the Supplier commences the supply of the Contracted Services as set out in Item 15 of clause 1 of the Services Schedule;

Sub-Contractor means any person engaged by the Supplier to perform all or any part of the Supplier's obligations under the Agreement on behalf of the Supplier as permitted under the Agreement;

Substantial Breach means a breach by the Client of the Client's obligations under any of clauses 14, 19, 20.7 and 21 inclusive;

Supplier Help Desk has the meaning in clause 11.1;

Supplier IP means all Intellectual Property Rights in the Software, the Client VeroCards and the Contracted Services held by the Supplier at the date of the Agreement or developed by the Supplier subsequently through activities related or unrelated to the subject matter of the Agreement;

Supplier Personnel means the Supplier and its Sub-Contractors and the directors, officers, employees, consultants and agents of each of them, and where the context requires includes any one or more of them;

Supplier Remedies means, as the context requires, all or any of the following remedies:

- (a) suspend the provision of the Contracted Services until any amounts that are due and payable but outstanding beyond agreed payment terms been paid in full;
- (b) charge the Client interest (on a compounding basis) on any overdue amount at the annual rate of 5% above the prevailing base lending rate quote by the Australia and New Zealand Banking Group Limited (ANZ). Such Interest will accrue daily from the date payment became overdue until the Supplier has received payment of the overdue amount, together with any interest accrued;
- (c) terminate the Agreement immediately without notice;
- (d) recover any Client VeroCards supplied by the Supplier;
- (e) sue the Client for specific performance of the Agreement; and
- (f) sue the Client for damages for default in addition to or instead of specific performance;

Supplier Representative means the representative of the Supplier identified in Item 4 of Schedule 1 who is appointed as its agent to carry out the functions allotted to the Supplier Representative under the Agreement, or such other person as the Supplier notifies to the Client from time to time;

Tax Invoice has the same meaning as given to it in the GST Act;

Technology means all source code, Documentation, specifications, Improvements and test suites thereto; inventions (whether patentable or not), invention disclosures and improvements; proprietary information, know how and technology; copyrightable work(s), including works of authorship, computer programs (whether in source code or executable code form), architecture and Documentation; databases and data compilations and collections (including knowledge databases, technical data, methods, processes, customer lists and customer databases); rights to uniform resource locators, web

site addresses and domain names; any similar, corresponding or equivalent rights to any of the foregoing; and all Intellectual Property Rights associated with all of the foregoing, each of which has been developed by the Supplier;

Third Party IP means all Intellectual Property Rights of any third party;

User Software means the Serenity software owned by the Supplier for use with each Client VeroCard that must be downloaded by a Client User on each Client User Own Device in accordance with the process posted on the applicable Supplier website, currently located at www.veroguard.com.au;

VeroCard means each variant of the device produced by the Supplier and supplied to the Client to enable the Client and the Client Users to access the Contracted Services, as specified in clause 3 of the Services Schedule;

VeroCard Software means each of the Embedded VeroCard Software and the User Software;

VeroGuard System means the Technology that facilitates the securing and authentication of digital identities, including by providing access to a host, utilisation of the VGS2018 messaging system developed by the Supplier, the VeroCard Software and sub-licenses to use the Patents, together with all improvements, and includes a device and system having the functionality that includes connecting a VeroCard and a host, management of the VeroCard and additional software and functionality utilising the VGS2018 messaging system to facilitate the securing and authentication of digital identities;

Veroid means a digital record only accessible by authorised Client Users that is stored in a High Security Module (HSM) that allows a Client User to digitally authenticate to access approved Client digital services. A Client Veroid is acquired by each Client User under the Client Veroid Acquisition process posted on the applicable Supplier website, currently located at www.veroguard.com.au and will conform to Australian Digital Identity Proofing Levels; and

Versions means, in relation to an item of Software, a version of the Software that provides major additional functionality compared with the previous version.

1.2 Interpretation

In the Agreement, unless the context otherwise requires:

- (a) headings are for convenience only;
- (b) words importing the singular include the plural and vice versa;
- (c) a word of any gender includes the corresponding words of each other gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority;
- (e) a reference to a statute includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (f) a reference to the word "including" and similar expressions are not words of limitation;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a Party to a document includes that Party's successors and permitted assigns;
- (i) a reference to an amount of money is a reference to the amount in the lawful currency of Australia;
- (j) a reference to an obligation includes a liability and a duty and a reference to performance includes observance;
- (k) a reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to the Agreement;
- (l) where any word or phrase is defined in the Agreement any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) if an act must be done on a specified day which is not a Business Day, that act must be done instead on the next Business Day; and
- (n) no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or any part of it.

2. AGREEMENT

2.1 Request for Services Schedule

Each time the Client requires the provision of Contracted Services and Client VeroCards, the Client may request that the Supplier provide a Services Schedule for that particular supply and the Supplier may provide a Services Schedule. There are no limits on how many times the Client may request that the Supplier provide a Services Schedule.

2.2 Incorporation of Related Documents into Services Schedule

Each Services Schedule incorporates each Related Document by reference.

2.3 Making of the Agreement

When the Supplier provides the Client with a Services Schedule under clause 2.1, the Services Schedule will be deemed accepted by the Client and becomes the **Agreement** when the Client places a Purchase Order by either:

- (a) signing a Services Schedule and returning it to the Supplier;
- (b) issuing an executed Purchase Order for the Contracted Services on the Services Schedule referencing these Standard Terms & Conditions or the Services Schedule in accordance with clause 8; or
- (c) sending an email or other writing accepting the Services Schedule.

The Supplier will not be bound by any terms added by a Client to a Services Schedule and, unless those terms are expressly agreed to in writing by the Supplier, the Client agrees that those terms are excluded.

2.4 Entire agreement

- (a) Each Agreement comprises the entire agreement between the Parties in relation to the supply of the Contracted Services and the Client VeroCards specified in that Agreement and supersedes all prior representations, proposals and agreements in connection with the subject matter of the Agreement.
- (b) No reliance will be placed by any of the Parties on any representation, promise or other inducement made or given or alleged to be made or given by any one Party to another Party prior to the date of execution of the Agreement.

2.5 No exclusivity

An Agreement is not evidence of, nor does it create, an exclusive relationship between the Client and the Supplier in respect of the supply of the Contracted Services (or any aspect of it).

2.6 Amendments to an Agreement

The Supplier may change an Agreement from time to time upon notice in writing to the Client.

3. REPRESENTATIVES

3.1 Client Representative

- (a) The Client Representative is responsible for giving directions for and on behalf of the Client as provided in the Agreement.
- (b) Directions given to the Supplier by any person other than the Client Representative will not bind the Client unless ratified by the Client Representative.

3.2 Supplier Representative

- (a) The Supplier Representative is responsible for liaising with the Client Representative in relation to any of the matters referred to in clause 3.1. The Supplier Representative will have full power to legally bind the Supplier in respect of all matters arising out of the Agreement.
- (b) Any direction which the Client Representative gives to a Supplier Representative is deemed to have been given to the Supplier for and on behalf of the Client and the Supplier must comply with that direction.
- (c) Any communication given, or document signed, by a Supplier Representative is deemed to have been given or signed by the Supplier and will bind the Supplier.

- (d) Matters within the knowledge of a Supplier Representative are deemed to be within the knowledge of the Supplier.

3.3 Replacement of representative

Either Party may, from time to time, revoke the appointment of its representative and appoint another person as its representative and that Party must give 7 days' notice of such revocation and appointment to the other Party.

4. INTEGRATION WORKS

4.1 Identification of Integration Works

When the Supplier receives a request from the Client that it provide to the Client a Services Schedule for Contracted Services, before providing the Services Schedule, the Supplier will conduct a review and (if necessary) inspection of the Client's IT infrastructure, and the Client will assist the Supplier with that review by providing access to the Client's premises and remote access to the Client's IT infrastructure, to determine what, if any, works are required to be undertaken to enable the VeroGuard System to interact with the Client's IT infrastructure to enable the Contracted Services to be provided (**Integration Works**).

4.2 Program and quote

The Supplier will provide the Client with a program for the undertaking of the Integration Works and a quote for the carrying out of the Integration Works.

4.3 Acceptance

Following receipt of the program and quote under clause 4.2, if the Client notifies the Supplier that it accepts the program and quote, the program and quote will be added to the Services Schedule.

5. CONTRACTED SERVICES

5.1 No supply until executed Services Schedule

The Supplier has no obligation to provide the Contracted Services until the Client has executed a Services Schedule and the Agreement has been formed.

5.2 Supply of Contracted Services

The Supplier must supply the Contracted Services in accordance with the terms of the Agreement and in consideration for the payment of the Fees by the Client.

5.3 Contracted Services

The Contracted Services to be provided by the Supplier to the Client are, initially, the Contracted Services described in clause 2 of the Services Schedule, subject to any Special Conditions.

5.4 Variation to Contracted Services

The Parties may at any time and from time to time, in writing, vary, reduce or amend the terms of the supply of any of the Contracted Services or add new services to become Contracted Services.

5.5 Terms of supply of Contracted Services

The provision of the Contracted Services by the Supplier to the Client is subject to:

- (a) the Client and each Client User complying with the Client VeroCard Activation Process, including:
 - (i) downloading the User Software on to each Client User Own Device; and
 - (ii) each Client User acquiring a Client VerolD; and
- (b) the Client complying with the terms of use of each:
 - (i) End User License Agreement; and
 - (ii) Software Maintenance Agreement.

5.6 Period of supply of Contracted Services

The Supplier will supply the Contracted Services to the Client from the Start Date until the earlier of the date:

- (a) the Supplier last ceases to provide the Contracted Services to the Client; and
- (b) the Agreement is terminated in accordance clause 22.

5.7 Additional VeroCards or Contacted Services

If the Client at any time wishes to acquire from the Supplier either:

- (a) new or additional Contacted Services; or
 - (b) an additional quantity of VeroCards to add to the Client VeroCard Quantity,
- the Client will make a written request to the Supplier and, once the terms and conditions of the relevant supply have been agreed, the Parties will either execute:
- (c) a variation to an existing Services Schedule setting out the commercial and any contractual terms of the supply, at which point the written variation will be incorporated into the Agreement; or
 - (d) a new Services Schedule setting out the commercial and any contractual terms of the supply, at which point a new Agreement will be formed.

6. CLIENT VEROCARD ADMINISTRATION SOFTWARE

6.1 Nominated Client Server

- (a) The Client must provide the Supplier with details of the Nominated Client Server, including the technical specifications set out in Item 9 of clause 1 of the Services Schedule.
- (b) The Supplier will attend the Client's premises to inspect the suitability of the Nominated Client Sever as the server to receive the Client VeroCard Administration Software Upload.
- (c) If the Supplier forms the view that, for technical reasons, the Nominated Client Sever is not suitable for the Client VeroCard Administration Software Upload, the Parties will work in good faith to identify a server controlled by the Client that is or with modifications will be suitable for the Client VeroCard Administration Software Upload, which will then become the Nominated Client Sever.

6.2 Client VeroCard Administration Software Upload

- (a) Once a server is agreed to be the Nominated Client Server, the Supplier will undertake the Client VeroCard Administration Software Upload onto the Nominated Client Sever, if possible on the same day that the inspection under clause 6.1(b) is carried out or, if not possible, as soon as practicable after that date.
- (b) To enable the Supplier to provide the Contracted Services, the Client acknowledges and agrees that the Supplier will need to perform the Client VeroCard Administration Software Upload.
- (c) The Supplier will carry out the Client VeroCard Administration Software Upload starting from the date set out in Item 10 of clause 1 of the Services Schedule.
- (d) When the Client VeroCard Administration Software Upload has been satisfactorily completed, the Supplier will certify the same.

6.3 Client VeroCard Administration Software Upload Fee

In consideration of the due performance of the Client VeroCard Administration Software Upload, the Client covenants to pay the Supplier any Client VeroCard Administration Software Upload Fee.

7. TECHNICAL TRAINING

7.1 Initial training

The Supplier will, for no cost, provide [2] key IT staff at the Client with end-user training for use of the Client VeroCard Administration Software and the Contracted Services.

7.2 Additional training

The Client may from time to time request that the Supplier provide additional end-user training for use of the Client VeroCard Administration Software and the Contracted Services in consideration of the payment of the Training Fee for the training of each person.

8. PURCHASE ORDERS

8.1 Matters relevant to all Purchase Orders

All Purchase Orders must:

- (a) specify:
 - (i) the particular Contracted Services required;
 - (ii) the number of VeroCards required; and
 - (iii) the requested VeroCard delivery location; and
- (b) be signed and dated by the Client.

8.2 Right to reject

- (a) All Purchase Orders placed by the Client are subject to acceptance by the Supplier.
- (b) The Supplier may reject all or a part of a Purchase Order if there is an insufficient supply of the VeroCards which prevents the Supplier being able to immediately fulfil that part of the Purchase Order. If there is a shortfall, the Supplier will supply the remaining units of the VeroCards as soon as commercially practicable.

8.3 Confirmation of Purchase Orders

Within 5 Business Days of receipt of a Purchase Order, the Supplier will provide a written notice to the Client confirming:

- (a) the Purchase Order;
- (b) the anticipated delivery date or dates;
- (c) the quantity of VeroCards to be delivered on each date or date; and
- (d) the delivery location.

8.4 No terms implied by Purchase Order

The Supplier will not be bound by any terms added by a Client to a Purchase Order and, unless those terms are expressly agreed to in writing by the Supplier, the Client agrees that those terms are excluded.

8.5 Cancellation of Purchase Order

Unless otherwise agreed in writing by the Supplier Representative, the Client may not cancel a Purchase Order which has been accepted by the Supplier.

9. FEES

9.1 Fees

In consideration of the Supplier providing the Contracted Services, the Client VeroCards and the Software under the Agreement, the Client irrevocably agrees to pay the Fees.

9.2 Responsibility for payment of Fees

The Client is solely responsible for payment of all Fees.

9.3 Integration Works Fee

The Integration Works Fee is payable for the Integration Works at the times agreed in Schedule 5.

9.4 Client VeroCard Administration Software Upload Fee

The Client VeroCard Administration Software Upload Fee is payable for each Client VeroCard Administration Software Upload in the month following the Client VeroCard Administration Software Upload.

9.5 Client VeroCard Unit Fee

The Client VeroCard Unit Fee is payable in the month following delivery of the Client VeroCards to which the Client VeroCard Unit Fee applies.

9.6 Client VeroCard Delivery Fee

The Client VeroCard Delivery Fee is payable in the month following delivery of the Client VeroCards to which the Client VeroCard Delivery Fee applies.

9.7 Client Veroid Acquisition Fee

The Client Veroid Acquisition Fee is payable each time a Client User undertakes a Client Veroid Acquisition in the month following the relevant Client Veroid Acquisition.

9.8 Client VeroCard Activation Fee

The Client Veroid Activation Fee is payable each time a Client User undertakes a Client Veroid Activation in the month following the relevant Client Veroid Activation.

9.9 Client VeroCard Usage Fee

(a) The Client VeroCard Usage Fee is payable:

- (i) from the date that the Client VeroCards are delivered to the Client (irrespective of whether a Client VeroCard has been activated or not) and for each month of the Client VeroCard Usage Fee Minimum Payment Term;
- (ii) each month following the end of the Client VeroCard Usage Fee Minimum Payment Term where a Client VeroCard is continued to be used by the Client or any Client User to access the Contracted Services; and
- (iii) irrespective of whether that or any other Client VeroCard has been activated by a Client User,

and is payable 15 days in advance and 15 days in arrears of the provision of the Contracted Services.

(b) The Supplier will increase the monthly Client VeroCard Usage Fee at the times and in accordance with the Client VeroCard Usage Fee Adjustment Formula.

9.10 Training Fee

The Training Fee is payable for the Supplier training the agreed number of the Client Personnel on how to support the Contracted Services in the month following the provision of the training.

9.11 Call Out Fee

The Call Out Fee is payable each time there is an Agreed Call Out in the month following the relevant Agreed Call Out.

9.12 Client VeroCard Loss Replacement Fee

The Client VeroCard Loss Replacement Fee is payable each time there is a Client VeroCard Replacement in the month following the relevant Client VeroCard Replacement.

9.13 Early Termination Fee

The Early Termination Fee is payable if there is a termination under clause 24.2 prior to the last day of the Client VeroCard Usage Fee Minimum Payment Period.

9.14 Tax Invoices

The Supplier will issue a Tax Invoice for each Fee.

9.15 Payment terms

Payment terms are as follows

- (a) all prices are in \$A and exclude GST, taxes and charges;
- (b) all terms to be considered strictly confidential to the Client;
- (c) Tax Invoices to be issued by the Supplier at the beginning of each month; and
- (d) all Tax Invoices to be paid within 14 days of date of issue, unless agreed otherwise in writing by the Supplier Representative.

9.16 Failure to pay

If the Client fails to make payment of any Fee in accordance with clause 9.15(d) after demand for payment by the Supplier, all amounts owing by the Client to the Supplier on any account will immediately become due and payable together with legal costs of enforcement and the Supplier may in its absolute discretion exercise any of the Supplier Remedies.

9.17 Disputed Tax Invoices

If disputes any amount shown on a Tax Invoice, it must notify the Supplier within 7 days of receipt of the Tax Invoice and must pay any amounts not in dispute in accordance with clause 9.15(d), provided that the payment by the Client of any amount the subject of a disputed tax invoice is not to be considered as an acceptance of the amount in dispute or of the Client liability to make that payment. Any dispute must be resolved in accordance with clause 25 and, if any amount is determined to be payable by the Client at that time, the Client must pay that amount within 3 Business Days of the date of the determination.

9.18 Errors or exceptions in invoicing

Without limiting clause 9.17, if either the Supplier or the Client discovers or is advised of any errors or exceptions relating to its invoicing for the Supply, the Client and VGS will jointly review the nature of the errors or exceptions, and the Supplier must, if appropriate, take prompt corrective action and adjust the relevant tax invoice or refund overpayments.

10. MANUFACTURE AND DELIVERY OF CLIENT VEROCARDS

10.1 Commencement of manufacture

The Supplier will not commence the manufacture of VeroCards for the Client until it has received and accepted a Purchase Order in accordance with clause 8.

10.2 Delivery of VeroCards

- (a) Delivery times for VeroCards set out in Schedule 6 are estimates only and the Supplier will not be liable for any loss, damage, or delay suffered or incurred by the Client or its customers arising from early, late or non-delivery of the VeroCards.
- (b) The Supplier may make part deliveries of any Purchase Order and each part delivery will constitute a separate supply of the VeroCards upon these Standard Terms & Conditions.
- (c) Delivery of the VeroCards must be made at the Client's site address or nominated address at time of Purchase Order placement. The Client must make all arrangements necessary to take delivery of the VeroCards whenever they are tendered for delivery.
- (d) The Supplier may deliver the VeroCards by separate instalments.
- (e) The failure of the Supplier to deliver will not entitle either party to treat the Agreement as repudiated.
- (f) The Supplier will not be liable for any loss or damage whatsoever due to failure by the Supplier to deliver the VeroCards (or any of them) promptly or at all.

10.3 Defective VeroCards on delivery

- (a) The Client must inspect the VeroCards on each delivery and may, within 7 days of delivery, notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description in clause 3 of the Services Schedule.
- (b) The Client must give the Supplier an opportunity to inspect the VeroCards within a reasonable time following delivery if there is a suspected defect. If the Client fails to comply with these provisions, the VeroCards will be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

- (c) The Supplier's liability for any defective VeroCards is limited to either (at the Supplier's discretion) replacing the VeroCards or repairing the VeroCards provided that the Client has returned the defective VeroCards to the Supplier.

10.4 No returns for change of mind or incorrect ordering

The Client acknowledges and agrees that, as the VeroCards are manufactured specifically for the Client on the basis of the agreed Purchase Order, no VeroCards can be returned by the Client to the Supplier due to a change of mind by the Client or as a result of incorrect ordering by the Client.

11. SUPPLIER HELP DESK

11.1 Establishment

The Supplier will maintain a help desk (**Supplier Help Desk**) that any Client User can access to seek assistance with any aspect of the Contracted Services, including a Client VerolD Acquisition, a Client VerolD Activation and the operation or issues with a Client VeroCard.

11.2 Accessing the Supplier Help Desk

The Supplier Help Desk may be accessed at any time by calling the number or sending an email to the number or email set out in Item19 of clause 1 of the Services Schedule.

11.3 Remote support

All support provided by the Supplier Help Desk will, wherever possible, be undertaken remotely.

11.4 If remote support not available

If the Supplier Help Desk is unable to provide remote support for any issue, the Supplier will provide the Client with a Call Out Quotation under clause 12.

12. CALL OUTS

12.1 Nature of Call Outs

A Call Out will occur either if:

- (a) the Supplier, acting reasonably, determines that a personal attendance is required on any premises of the Client to attend to an issue relating to the Contracted Services (other than as part of the Integration Works or the Client VeroCard Administration Software Upload); or
- (b) the Client specifically requests that a personal attendance by the Supplier is required on any premises of the Client to attend to an issue relating to the Contracted Services (other than as part of the Integration Works or the Client VeroCard Administration Software Upload).

12.2 Call Out Quotation

Where a Call Out is required under clause 12.1, the Supplier will agree the details, nature and timing of the Call Out and will provide the Client with a written quotation for the Call Out Fee for that Call Out (**Call Out Quotation**).

12.3 Acceptance of Call Out Quotation

If the Client accepts the Call Out Quotation under clause 12.2, the Client must either:

- (a) sign the Call Out Quotation and return it to the Supplier; or
- (b) send an email or other writing accepting the Call Out Quotation.

The Supplier has no obligation to perform the Call Out until the Call Out Quotation has been accepted.

13. REPLACEMENT OF CLIENT VEROCARDS

13.1 Defect or loss notification

If, at any time from the time a Client User commences using a Client VeroCard to access the Contracted Services:

- (a) a Client User is unable to use a Client VeroCard to access the Contracted Services, the Client must notify the Supplier Help Desk providing the Client VeroID for the particular Client VeroCard and as much detail as it can as to what the problem is (**Client VeroCard Defect Notification**); or
- (b) a Client VeroCard is lost, the Client must notify the Supplier Help Desk providing the Client VeroID for the lost Client VeroCard (**Client VeroCard Loss Notification**).

13.2 Client VeroCard Defect Notifications

Following receipt of a Client VeroCard Defect Notification under clause 13.1(a), the Supplier Help Desk will try to resolve the issue in accordance with the process posted on the applicable Supplier website, currently located at www.veroguard.com.au.

13.3 Client VeroCard Loss Notifications

Following receipt of a Client VeroCard Loss Notification under clause 13.1(b):

- (a) the Supplier will send to the Client a replacement VeroCard (**Client VeroCard Loss Replacement**) in accordance with the process posted on the applicable Supplier website, currently located at www.veroguard.com.au; and
- (b) the Client must pay the Client VeroCard Loss Replacement Fee in accordance with clause 9.12.

14. TITLE AND RISK

14.1 Title

- (a) Title in the Client VeroCards and any Software supplied by the Supplier to the Client will not pass to the Client and will remain absolute property of the Supplier and/or the applicable third party licensor(s) at all times.
- (b) The Client is not entitled to sell, transfer or otherwise dispose of the Client VeroCards without the consent of the Supplier.

14.2 Risk

- (a) Client VeroCards supplied by the Supplier to the Client will be at the Client's risk immediately upon:
 - (i) delivery of the Client VeroCards to the Client, the Client's agent or into the Client's custody or control; or
 - (ii) collection of the Client VeroCards by the Client's nominated carrier or agent.
- (b) Risk in the Client VeroCards will remain with the Client at all times unless the Supplier retakes possession of the Client VeroCards in accordance with clause 14.2(c).
- (c) If the Client has breached the Agreement, the Client authorises the Supplier, at any time, to enter onto any premises upon which the Client VeroCards are used or stored to enable the Supplier to:
 - (i) inspect the Client VeroCards; and/or
 - (ii) reclaim the Client VeroCards.
- (d) The Client acknowledges that, in the case of Software, any refusal or failure to pay may result in cancellation of the license to use the Software.
- (e) At the end of the Term, the Client must return all Client VeroCards to the Supplier at the location nominated by the Supplier.
- (f) The Client agrees that the provisions of this clause 14 apply despite any arrangement under which the Supplier grants credit to the Client.

15. SOFTWARE AND CONTRACTED SERVICES WARRANTIES

15.1 Software and Contracted Services warranties

The Supplier warrants that Software and the Contracted Services will:

- (a) substantially conform to the applicable Documentation for the Software and the Contracted Services; and
- (b) be free from malfunctions, errors or other defects until the expiration of the applicable warranty period.

The Supplier does not warrant that:

- (c) the operation of Software and the Contracted Services will be uninterrupted or error free;
 - (d) all defects can be corrected, or
 - (e) the Software or the Contracted Services meets the Client's requirements,
- except if expressly warranted by the Supplier in its quote.

15.2 Warranty limitations

- (a) To the extent permitted by Law, the warranties referred to in clause 15.1 are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect merchantability and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.
- (b) The warranties referred to in clause 15.1 do not cover problems that arise from:
 - (i) accident or neglect by the Client or any third party;
 - (ii) any third party items or services with which any of the Software or the Contracted Services is used or other causes beyond the Supplier's control;
 - (iii) installation, operation or use not in accordance with the Supplier's instructions or the applicable Documentation;
 - (iv) use in an environment, in a manner or for a purpose for which any of the Software or the Contracted Services was not designed; or
 - (v) modification, alteration or repair by anyone other than the Supplier or its authorised representatives.
- (c) The Supplier has no obligation whatsoever for any of the Software or the Contracted Services that are installed or used beyond the licensed use.

15.3 Australian Consumer Law

Nothing in the Agreement is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law and the Fair Trading Acts (as amended) in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

16. LIABILITY

16.1 Supplier liability

- (a) The Supplier's entire liability and the Client's exclusive remedies under the warranties described in clause 15.1 will be for the Supplier, at its option, to remedy the non-compliance or to replace the affected Software or Contracted Services within a reasonable time.
- (b) The foregoing clause does not void any supplementary remedies made available to the Client by a third party with respect to which the Supplier will have no liability or obligation.

16.2 Limitation on direct damages

The Supplier's total liability and client's sole and exclusive remedy for any claim of any type whatsoever, arising out of the Software or the Contracted Services is limited to proven direct damages caused by the Supplier's sole negligence in an amount not to exceed:

- (a) \$200,000, for proven damage to real or tangible personal property; and
- (b) an amount equal to the previous 12 months Client VeroCard Usage Fees paid by the Client for the Contracted Services or the fee paid for the Software from which such claim arises, for damage of any type not identified in clause 16.2(a) or otherwise excluded under the Agreement.

16.3 No indirect damages

Except with respect to claims regarding violation of the Supplier's Intellectual Property Rights, neither the Client nor the Supplier have liability to the other for any special, consequential, exemplary, incidental or indirect damages (including loss of profits, revenues, data and/or use, even if advised of the possibility thereof).

16.4 Limitation period

Unless otherwise required by applicable Law, the limitation period for claims for damages will be 18 months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

17. CLIENT INDEMNITY

17.1 Indemnity

Subject to clause 16.3, the Client must indemnify the Supplier and the Supplier's Personnel against any Claims of any nature whatsoever in connection with or arising out of any or all of the following:

- (a) breach by the Client, the Client's Users or the Client's directors, employees, subcontractors and agents, of any warranties, terms or conditions of the Agreement;
- (b) incorrect application of any of the Software, the Client VeroCards or the Contracted Services by the Client or information given by the Client to anyone in relation to any of the Software, the Client VeroCards or the Contracted Services;
- (c) any loss or damage to any of the Software, the Client VeroCards or the Contracted Services or to property of any person (including the Client's property) or for any injury to, or death, illness or incapacitation of any person, arising from, contributed to or caused by or in relation to the Client's use, maintenance, possession or storage of any of the Software, the Client VeroCards or the Contracted Services and whether occasioned by the Supplier's negligence or otherwise;
- (d) delivery, selection, purchase, acceptance or rejection, ownership, possession, use, repair, maintenance, storage, or operation of any of the Software, the Client VeroCards or the Contracted Services, and by whomsoever used or operated (except where used by the Supplier or any person on behalf of the Supplier);
- (e) any reasonable action taken by the Supplier to remedy a default of the Agreement by the Client or the Client's directors, employees, subcontractors and agents and invitees; or
- (f) all costs and legal expenses, stamp duties, debt collectors fees and any other expenses, taxes or costs (on a full indemnity basis) reasonably incurred by the Supplier in order to recover monies owing by the Client for the Contracted Services for which payment has not been received.

17.2 Survival

This indemnity survives termination of the Agreement by either party for any reason.

17.3 Enforcement

It is not necessary for the Supplier to incur expense or make payment before enforcing a right of indemnity against the Client conferred by the Agreement.

18. PRIVACY

- (a) The Client agrees for the Supplier to obtain from a credit-reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Supplier.
- (b) The Client agrees that the Supplier may exchange information about the Client with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
 - (i) to assess an application by the Client;
 - (ii) to notify other credit providers of a default by the Client;

- (iii) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
 - (iv) to assess the credit worthiness of the Client.
- (c) The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) of the *Privacy Act 1988*).
- (d) The Client agrees that personal data provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Client and the Supplier or required by Law from time to time:
 - (i) provision of the Contracted Services;
 - (ii) marketing of the Contracted Services provided by the Supplier, its agents or distributors in relation to the Contracted Services;
 - (iii) analysing, verifying and or checking the Client's credit, payment and/or status in relation to provision of the Contracted Services;
 - (iv) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and
 - (v) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Contracted Services.
- (e) The Supplier may give information about the Client to a credit reporting agency for the following purposes:
 - (i) to obtain a consumer credit report about the Client; and/or
 - (ii) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

19. CLIENT CONTENT AND ACCOUNTS

19.1 Right

The Client agrees to use the Contracted Services only as permitted in the Agreement.

19.2 Compliance with Privacy Policy

The Client and each of the Client's users must comply with the Supplier Privacy Policy.

19.3 Client Content

- (a) The Client retains all rights to the Client Content and the Supplier does not own or license the Client Content.
- (b) The Client grants the Supplier a non-exclusive, worldwide, royalty-free, license to use, modify, reproduce and distribute the Client Content, only as required to provide the Services to which the Client has subscribed, and the Client warrants that:
 - (i) the Client has the right to grant the Supplier the license, and
 - (ii) none of the Client Content infringes on the rights of any third party.
- (c) Each party agrees to apply reasonable technical, organisational and administrative security measures to keep the Content protected in accordance with industry standards.
- (d) The Supplier will not view, access or process any of the Client Content, except:
 - (i) as directed or instructed by the Client or the Client's users, or
 - (ii) as required to comply with the Supplier's policies, applicable law, or governmental request.
- (e) The Client agrees to comply with all legal duties applicable to the Client as a data controller by virtue of the submission of the Client Content within the Services.
- (f) Notwithstanding anything to the contrary, this clause 19.3 expresses the entirety of the Supplier obligations with respect to the Client Content.

19.4 Client Accounts

- (a) The Client is solely responsible for:
 - (i) all use of the Contracted Services by the Client and the Client's users;
 - (ii) obtaining consent from the Client's users to the collection, use, processing and transfer of Content; and
 - (iii) providing notices or obtaining consent as legally required in connection with the Services.
- (b) The Supplier does not send emails asking for the Client's usernames or passwords, and to keep the Client's accounts secure, the Client should keep all usernames and passwords confidential.
- (c) The Supplier is not liable for any loss that the Client may incur if a third party uses the Client's password or account.
- (d) The Supplier may suspend the Contracted Services or terminate the Agreement if the Client, the Client's users, or attendees are using the Contracted Services in a manner that is likely to cause harm to the Supplier.
- (e) The Client agrees to notify the Supplier immediately and terminate any unauthorised access to the Contracted Services, the Client VeroCards or other security breach in accordance with the notification process notified by the Supplier to the Client from time to time.

20. INTELLECTUAL PROPERTY

20.1 Acknowledgment as to Supplier IP

The Client acknowledges that:

- (a) all Supplier IP embodied in or in connection with the Contracted Services and any related Documentation, parts, the Client VeroCards or the Software are the sole property of the Supplier or its suppliers; and
- (b) all Supplier IP or its suppliers may only be used by the Client with the express written consent of the Supplier or its suppliers, during the continuance of any relevant sale, and such consent extends only to use essential for the purposes stated in it.

20.2 Restrictions on Client

The Client must not register or use any trademarks, trade name, domain name, trading style or commercial designation or design used by the Supplier or its suppliers in connection with the Contracted Services, the Client VeroCards or the Software.

20.3 Client to indemnify

The Client will indemnify the Supplier against all liabilities, damages, costs and expenses which the Supplier may suffer or incur as a result of any work performed by the Supplier in accordance with the Client's specifications or as a result of the combination or use of the Contracted Services, the Client VeroCards or the Software with other equipment, parts or software not supplied by the Supplier, and which results in the infringement of any Intellectual Property Rights of any person.

20.4 Client Data and Client IP

The Client:

- (a) warrants to the Supplier that any Client Data or the Client IP provided to or used by the Supplier or the Supplier's Personnel will not infringe any Intellectual Property Rights;
- (b) indemnifies the Supplier against any infringement of this clause 20.4(c);
- (c) must not cause or permit anything which may interfere with, damage or endanger Supplier IP, Improvements or any Third Party IP, or assist or allow others to do so;
- (d) must immediately advise the Supplier when the Client becomes aware of any unauthorised use or attempted use by any person of the Supplier IP or Third Party IP;
- (e) immediately following termination of the Agreement, must discontinue the use of all Supplier IP and Third Party IP; and

- (f) acknowledges that the Supplier at all times remains the owner of all Supplier IP and that the Agreement does not prevent limit or restrict the Supplier from using or exploiting Supplier IP and the Client IP at any time.

20.5 Contract IP

All Contract IP will automatically vest with the Supplier and will be the property of the Supplier as and when created, and the Supplier does not transfer any right, title or interest in the Contract IP to the Client.

20.6 Licence of Client IP

If required in order to perform its obligations under the Agreement, the Supplier will have transferable, irrevocable and royalty free licence to use the Client IP.

20.7 Third Party IP

- (a) The Client warrants to the Supplier that, in respect of all Third Party IP which the Supplier will or may use:
 - (i) that Third Party IP has been disclosed to the Supplier;
 - (ii) it has obtained, or will obtain from the third party, at no cost to the Supplier, the necessary licences and consents to use those Third Party IP; and
 - (iii) it will not breach any of the licence arrangements referred to in this clause 20.7(a).
- (b) If the Client fails to comply with clause 20.7(a) for any reason whatsoever, the Client acknowledges and agrees that the Supplier is, in addition to any other rights or remedies it may have under the Agreement, entitled (but not required) to do one or more of the following:
 - (i) obtain the grant of a licence to use the Third Party IP itself at the expense of the Client; or
 - (ii) terminate the Agreement.

21. GRANT OF SOFTWARE LICENSES

21.1 Acknowledgement

The Client acknowledges that:

- (a) each VeroCard supplied to the Client contains the Embedded VeroCard Software; and
- (b) each Client User will be provided separately with the User Software for use with their Client VeroCard.

21.2 Grant of licence

- (a) The Supplier grants the Client and each Client User a personal, non-exclusive, non-sub-licensable, non-assignable and non-transferable license to use the VeroCard Software solely as part of the Client and the Client User's use of the Client VeroCards and in accordance with the terms and conditions of the Agreement.
- (b) The Client and the Client User's:
 - (i) may use the Firmware only as originally deployed onto a Client VeroCard;
 - (ii) may not separate the Firmware from the remainder of Client VeroCard or use the VeroCard Software on another VeroCard;
 - (iii) may not distribute, license, sell, rent, or otherwise provide the VeroCard Software to third parties; and
 - (iv) acknowledges that the VeroCard Software may have bugs or security vulnerabilities and that the Supplier does not warrant that the VeroCard Software is error-free or that the VeroCard Software or each Client VeroCard as a whole is free of all possible security vulnerabilities.

22. DEFAULT OF THE CLIENT

Without prejudice to any of the Supplier's other rights under the Agreement, if the Client:

- (a) breaches any term of the Agreement;
- (b) fails to make any payment due to the Supplier under the Agreement; or
- (c) causes a Substantial Breach and such breach is not remedied within 10 Business Days or is incapable of being remedied,

then the Supplier may, in its absolute discretion and without further liability to the Client, exercise any of the Supplier Remedies.

23. FORCE MAJEURE

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by a Force Majeure Event, performance by it of that obligation is suspended during the time, but only to the extent that compliance is prevented or delayed.

24. TERMINATION

24.1 Termination by Supplier for cause

The Supplier may terminate the Agreement with immediate effect by giving written notice to the Client if the Client:

- (a) breaches any provision of the Agreement and fails to remedy the breach within 30 days after receiving notice require it to do so;
- (b) becomes unable to pay its debts when they become due;
- (c) enters into any arrangement between itself and it (or any class of its) creditors;
- (d) ceases to carry on business;
- (e) has a mortgagee enter into possession or dispose of the whole or any part of its assets or business;
- (f) becomes Insolvent; or
- (g) has a receiver, receiver and manger, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.

24.2 Termination by Client for no cause

The Client may, in its discretion, terminate the Agreement at any time without cause by giving the Supplier 30 day's written notice.

24.3 Termination by Supplier for no cause

The Supplier may terminate the Agreement at any time without cause by giving the Client 30 day's written notice

24.4 Termination by consent

The Parties may agree to terminate the Agreement at any time.

24.5 Obligations on termination

On termination of the Agreement (for whatever cause):

- (a) the Supplier will immediately remotely de-activate each of the Client VeroCards and the Software and cease providing the Contracted Services;
- (b) the Client and each Client User must cease using the Contracted Services;
- (c) the Client must immediately return all of the Client VeroCards to the Supplier at the address nominated by the Supplier;
- (d) all of the licences for the Software granted to the Client immediately terminate;

- (e) the Client must use best endeavours to remove from the Nominated Client Server all copies of the Client VeroCard Administration Software; and
- (f) the Client must immediately pay all outstanding Fees, including any Early Termination Fee.

24.6 Termination not affect accrued rights

The termination of the Agreement will not affect any right or cause of action which has accrued to a Party at or prior to the date of termination.

24.7 Survival

Without limiting any other clauses intended to survive termination, clauses 16, 17, 20.6 and 21 survive the termination of the Agreement (for whatever cause).

25. DISPUTE RESOLUTION

25.1 Dispute

In the event of any dispute, question or difference of opinion between the Client and the Supplier arising out of or under the Agreement (**Dispute**), a party may give to the other party a notice (Dispute Notice) specifying the dispute and requiring its resolution under this clause 25.

25.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other party, each party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either party may commence legal proceedings in an appropriate court to resolve the matter.

25.3 Performance of obligations during Dispute

During the existence of any dispute, the parties must continue to perform all of their obligations under the Agreement without prejudice to their position in respect of such dispute, unless the parties otherwise agree.

25.4 Urgent interlocutory relief

Nothing in this clause 25 prevents a party from seeking any urgent interlocutory relief which may be required in relation to the Agreement.

26. CONFIDENTIALITY

26.1 Confidential information to be kept confidential

- (a) Except as otherwise permitted under the Agreement:
 - (i) each Party must treat as confidential all Confidential Information; and
 - (ii) a Party may only reproduce or use Confidential Information for the sole reason of performing its obligations under the Agreement, and not to the commercial, financial or competitive disadvantage of the other Party.
- (b) A Party must not:
 - (i) disclose Confidential Information to third parties; or
 - (ii) permit third parties to reproduce or use Confidential Information,
 - (iii) without the prior written consent of the other Party; and
 - (iv) each Party must take all reasonable precautions to ensure that its Personnel maintain the confidentiality of all Confidential Information in accordance with this clause.

26.2 Disclosure to Related Body Corporate

The Parties may disclose Confidential Information to a Related Body Corporate of the disclosing Party provided the recipient agrees in writing with the disclosing Party to be bound by the confidentiality obligations of the disclosing party under this clause.

26.3 Disclosure required by Law

The Parties will be entitled to make such disclosures as are required by Law, or the rules of a recognised securities exchange, but only to that extent and provided the disclosing Party first informs the other Party that such disclosure is required.

26.4 Permitted disclosures

The Parties will be entitled to disclose Confidential Information to any of the undermentioned persons who reasonably require disclosure and who have first agreed in writing with the disclosing Party to be bound by the confidentiality obligations of the disclosing party under this clause:

- (a) any financier or prospective financier;
- (b) any professional adviser; or
- (c) any assignee or prospective assignee.

26.5 Public announcements

The Client must not make any public announcement concerning the Agreement or any aspect of it without the prior consent of the Supplier, except to the extent the disclosure is required by Law but provided the Client first informs the Supplier that such disclosure is required.

27. GST

27.1 GST

- (a) Unless stated otherwise, all amounts payable under the Agreement are exclusive of GST.
- (b) The Supplier will, when making a claim for payment, render a Tax Invoice to the Client to which the particular payment claim refers.
- (c) Notwithstanding any contrary provision in the Agreement, the Recipient is not obliged to make any payment under the Agreement unless the Supplier has provided a Tax Invoice in respect of the Taxable Supply attributable to that payment.

27.2 Reimbursements

If any payment to be made to a Party under or in accordance with the Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that Party (in this clause a Reimbursement), then the amount of the payment must be reduced by the amount of any input tax credit to which that Party is entitled for that Reimbursement, such reduction to be effected before any increase in accordance with clause 27.3.

27.3 Adjustment for GST

- (a) If a Supply under or in connection with the Agreement constitutes a Taxable Supply, the Supplier may recover from the Recipient an amount on account of GST in addition to any payment or other consideration for the Supply.
- (b) The additional amount is equal to the Value for the Supply multiplied by the prevailing GST Rate.
- (c) The Recipient must pay that additional amount at the same time and in the same manner as the GST exclusive consideration is payable or to be provided for that Supply.

27.4 Definitions

A word or expression used in this clause 25 which is defined in the GST Law has the same meaning in this clause 25.

28. GENERAL

28.1 Further assurances

Each Party must do or cause to be done all things necessary to give effect to the Agreement and refrain from doing anything which might hinder performance of the Agreement.

28.2 Relationship of Parties

The Supplier is an independent contractor and the Agreement does not:

- (a) constitute a partnership or a joint venture between the Parties;
- (b) authorise a Party to assume or create any obligations on behalf of another Party except as specifically permitted under the Agreement; or
- (c) constitute a relationship between the Client and the Supplier as that of employer and employee.

28.3 Severance

If the whole or any part of a provision of the Agreement is invalid, illegal or unenforceable, then that provision will be severed from the Agreement and will not affect the validity or enforceability of the remaining provisions of the Agreement.

28.4 Waiver

The failure or delay by a Party to exercise any of its rights conferred upon that Party by the Agreement will not operate as a waiver of its rights and will not prevent that Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of the Agreement.

28.5 Successors and assigns

The Agreement binds and endures to the benefit of the Parties and their respective successors and permitted assigns.

28.6 Governing law

The Agreement is governed by and construed according to the laws of Victoria. The Parties submit themselves exclusively to the courts of competent jurisdiction and the courts of appeal in Victoria.