



By clicking on 'Accept' you confirm that you understand and agree to the terms and conditions set out below. You also agree to pay the purchase price of any Where Tags you buy and pay for any applicable Fees for access to our Where Services. You further confirm that you understand the Where Services may use the Mesh Network to locate your Asset(s). The Mesh Network is created by EROAD's in-cab devices, as well as other mobile devices which have downloaded the Where App.

EROAD'S WHERE TERMS – New Zealand

A. INTRODUCTION

The following terms apply to EROAD's Customers who have purchased a Where Tag or are accessing our Where Services, or both. To access Where Services, you will need to activate your Where Tag and either use the Where App, which the Customer or their Authorised Users may download and install on their mobile devices, or, by accessing our Website.

B. AGREEMENT STRUCTURE

The Agreement is made up of the following:

- (a) these Where Terms, which contain general provisions that apply to the Where Tag you buy and the Where Services we provide to you. These Where Terms may change from time to time in accordance with clause 12.2. For the most up to date copy see our Website;
- (b) a Sales and Services Agreement, which is each agreed quote that describes the Where Tag and Where Services we will provide to you (if applicable); and
- (c) an End User Licence Agreement ("**EULA**").

This Agreement applies on and from the Commencement Date.

C. IMPORTANT

It is important that you read the Agreement in full prior to using a Where Tag, the Where Services or the Where App. Some points we want to bring to your specific attention are:

- (a) **Privacy.** EROAD cares about your privacy and the privacy of your employees. We collect Data and use this information to continually provide you innovative products and services tailored to your needs. If you want to know more about how we collect, use, store, disclose and protect personal information, please read our Privacy Policy.
- (b) **Mesh Network.** When Authorised Users download the Where App on a mobile device, that mobile device, the data connectivity and the GPS module on the mobile device will all form part of the Mesh Network. This means that Authorised Users' mobile data plans that they have with their mobile telecommunications provider may be used by the Where App to transmit the location of Assets (including Assets owned by other Customers) located by the mobile device to EROAD. The Mesh Network assists in providing the location of your Assets and also assets of our other customers who receive Where Services from us.

**D. TERMS****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions.** In these Terms:

Affiliates shall mean any legal entity or other business organisation anywhere in the world in which EROAD's main holding company EROAD Limited holds a twenty-five per cent or higher equity interest whether directly or indirectly, and whether the interest is shares, debentures or otherwise, voting or non-voting.

Agreement means these Where Terms, a Sales and Services Agreement (if applicable) and an End User Licence Agreement, as may be renewed or amended from time to time.

Asset means a Customer-owned non-powered mobile machinery or equipment onto which the Where Tag is installed and has been registered.

Authorised User means any person:

- (a) who uses the Where Services on the Customer's behalf;
- (b) who downloads the Where App or has access to the Website on the Customer's behalf; or
- (c) to whom Customer wishes to grant access to Data.

Commencement Date means the earlier of the date the Where Tag is purchased, the Where App is first downloaded by an Authorised User or when the Website is first accessed by an Authorised User.

Customer/ you/ your means a person who is bound by the terms of this Agreement, including being the person: (i) identified in the Sales and Services Agreement, or (ii) who has purchased a Where Tag on behalf of their organisation, or (iii) who has registered a Where Tag for use by their organisation, or (iv) has authority to grant access to Where Services, or (v) all of the above, and who is bound to the terms of this Agreement.

Data means all information:

- (a) inputted into the Where Services by Customer;
- (b) automatically generated or collected by the Where Tag, the Where App or a Website used by the Customer, its employees, Authorised Users or anyone for whom the Customer is responsible for,

and may include Personal Information.

Disputed Charges has the meaning given in clause 5.5.

End User Licence Agreement ('EULA') means an agreement that applies where the Customer, or the Customer's Authorised User, employee, agent or contractor, downloads or uses the Where App.

EROAD/ we/ our/ us means EROAD Limited of 260 Oteha Valley Road, Albany, New Zealand.

Fee Accrual Period means each monthly period commencing on the 25th of the preceding month and ending on the 25th of the following month.

Fees means the amount invoiced by EROAD to the Customer for receiving the Where Services during each Fee Accrual Period.

Force Majeure Event means an act of God, strike, lockout, war (declared or undeclared), blockade, act of public enemy, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental restraint, riot, civil commotion, expropriation, prohibition, intervention or embargo, industrial conditions, electrical, telecommunications, or other utility or network failures, or other event which is not within the control of the affected party, but excludes:



- (a) any event which the party affected could have avoided or overcome by exercising a standard of reasonable care at a reasonable cost; or
- (b) a lack of funds for any reason.

GST means any goods and services tax imposed by the Goods and Services Tax Act 1985, as amended or replaced from time to time, and any associated legislation and regulations to the extent they relate to GST.

Intellectual Property Rights means rights to patents, trade marks, service marks, trade names, inventions, trade secrets, copyright, moral rights, design rights, look and feel, know-how and any other similar rights.

Interest Rate means, in respect of any rate of interest to be calculated pursuant to this Agreement, the overdraft base interest rate as quoted on the Bank of New Zealand's website (or any successor website) at or about 10.00 am on the first working day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding working day of the period.

Mesh Network means a communication network created by EROAD's in-cab devices as well as any mobile devices which have downloaded the Where App.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by you as a consequence of, or otherwise in connection with, this Agreement.

Privacy Act means the Privacy Act 2020, as amended or replaced from time to time.

Privacy Law means all legislation, principles, industry codes and policies, as amended or replaced from time to time, which relate to the collection, use, disclosure, storage or granting of access rights to Personal Information, and includes the Privacy Act.

Sales and Services Agreement means an agreement that the Customer enters into with EROAD, when purchasing Where Tags directly from EROAD.

Software means any software embedded in the Where App, the web-based information management software made available on the Website, and software used in connection with, or embedded in, the Where Services.

Third Party Provider means any third party that EROAD has a supply arrangement with for Where Tag and Where Services or with whom EROAD has links to under this Agreement, including any nominated online sellers of the Where Tags.

Website means my.eroad.co.nz or any other website operated by EROAD or by a Third Party Provider in relation to Where Tag or Where Services.

Where App means a software application programme developed by EROAD, or a Third Party Provider, for download by Authorised Users on their mobile devices for the purposes of accessing the Where Services.

Where Services means the provision of the Where App and the Website which provide Customers with information on the last received location of an Asset as located by the Mesh Network.

Where Tag means a hardware device supplied by EROAD, or a Third Party Provider, for the purposes of locating an Asset by use of the Mesh Network.

Where Tag Price means the purchase price of a Where Tag.

Where Terms means these terms and conditions set out in clauses 1 to 12.

**1.2 Interpretation:**

- a) section, clause and other headings are for ease of reference only;
- b) the word person includes a corporation;
- c) words importing the singular include the plural and vice versa; and
- d) if there is a conflict or inconsistency between the terms of a Sales and Services Agreement, these Where Terms and the End User Licence Agreement, then, to the extent of the conflict or inconsistency the following order of precedence shall apply (in descending order of priority):
 - (i) these Where Terms;
 - (ii) End User Licence Agreement;
 - (iii) a Sales and Services Agreement (if applicable).

2. PROVISION OF WHERE TAGS AND SERVICES

2.1 Supply of Where Tags and Where Services. We will supply Where Tags and Where Services to you solely for your internal business use. You and your Authorised Users will need to download the Where App or use the Website in order to be able to access the Where Services. For the Mesh Network to locate any Asset, a device on the Mesh Network needs to be within the required range of the Asset. **We do not guarantee that you will be able to view the current location of any particular Asset by using the Where Services.**

3. NETWORK DEPENDENCIES

- 3.1 Connectivity.** The Where Tag units rely on Bluetooth® connectivity, Global Positioning Satellites and cellular telephone technology for sending signals to EROAD. While we will use reasonable care and skill to provide the Where Services to you, you acknowledge that it is improbable that such connectivity will have 100% coverage or functionality in any area at all times due to many conditions, including but not limited to, geographic conditions and physical obstructions, weather conditions, the number of devices on the Mesh Network or faults in a telecommunications network or other networks used by us to provide the Where Services to you, as well as our Where Services' reliance on systems and other services that we do not own or control. We will not be liable to you, to the extent permitted by law, for failure of the Mesh Network to locate any Asset or for loss of functionality of the Where Services caused by the signals to and from any Where Tag being temporarily refused, interrupted, curtailed, limited or discounted for reasons beyond EROAD's control (including the reasons set out above).
- 3.2 Mesh Network.** When Authorised Users download the Where App on a mobile device, that mobile device, the data connectivity and the GPS module on the device will all form part of the Mesh Network. This means that Authorised Users' mobile data plans that they have with their mobile telecommunications provider may be used by the Where App to transmit the location of Assets (including assets owned by other Customers) anytime an Authorised User's mobile device is within range of an Asset (including Assets owned by other Customers), to EROAD. The Mesh Network assists in providing the last known location of your Assets and also assets of our other customers who receive Where Services from us.
- 3.3 No third-party relationships.** You acknowledge and agree that you are not a third-party beneficiary of any agreement between EROAD and any Third Party Provider.
- 3.4 Third Party Links.** Our Where App and Website may contain links to content or services provided by third parties ('Third Party Links'). These Third Party Links are not under our control, and we are not responsible for their content, services, performance, operation, availability, business practices or policies. We are providing these Third Party Links to you only as a convenience, but we do not imply any endorsement or recommendation of their content or services, or of any association of us with such third parties. If you access any of these Third Party Links, you do this entirely at your own risk and any charges or obligations you incur in your dealings with these third parties, are your responsibility. The websites available through the Third Party Links are subject to their own terms and policies, including privacy and data gathering practices.



4. CUSTOMER'S RESPONSIBILITIES

4.1 Installation of Where Tag. You agree to be responsible for the proper installation of all Where Tags. Any installation is at your own risk and you will ensure the Where Tag is properly and safely installed on the Asset. You agree that EROAD is not liable for any improper or incorrect installation of the Where Tag. We will not be responsible for any such damage caused to any Asset and will not be required to restore any Asset to its pre-installation condition.

4.2 Care of Where Tag. Given the Where Tag is used in an external environment, you should ensure the Where Tag is securely attached to your Asset, and in such a way that it will not be damaged. You agree that any damage to the Where Tag due to your failure to secure the Where Tag in an appropriate manner is not covered by the warranties under these Where Terms.

4.3 Proper Use. You will:

- (a) use the Where Tag, Software, Where Services and Website for their intended purposes and in accordance with our directions;
- (b) not tamper, modify, copy, adapt, disassemble, decompile, make derivative works from or reverse engineer the Where Tag, Where App or Software;
- (c) not use the Where Tag, Software, Where Services, Where App or Website for any illegal or offensive act;
- (d) not undermine the security and integrity of EROAD's computer systems or networks or Where Services;
- (e) not use Where Services in any way that may impair the functionality of the Where Services itself Software, Where App or Website;
- (f) not attempt to gain unauthorised access to any materials other than those made available to you by EROAD;
- (g) notify us of any improper or illegal use of the Software, Where Services, Where Tag, Where App or Website;
- (h) comply with our directions regarding use of the Software, Where Services, Where Tag, Where App or Website;
- (i) be responsible for Authorised Users' use of the Software, Where Services, Where Tag, Where App or Website, and ensure Authorised Users abide strictly with all applicable laws; and
- (j) not intercept or "sniff" the communication packets between the Where Tag and other mobile devices.

4.4 Security. You will:

- (a) be responsible for granting proper authorisation to Authorised Users;
- (b) keep secure and confidential all passwords used by you and your Authorised Users in connection with the Where Services;
- (c) notify EROAD of any unauthorised use of your or your Authorised User's password; unauthorised possession of or access to the Software, Where Services, Where Tag, Where App or Website, or any other breach of security;
- (d) not knowingly allow the Software, Where Services, Where Tag, Where App or Website to be affected by any virus, worms or any destructive media; and
- (e) be solely responsible for anyone who accesses or uses the Software, Where Services, Where Tag, Where App or Website, whether authorised by you or not.

4.5 Compliance. You remain solely responsible for complying, and ensuring that all Authorised Users comply, with all applicable laws, rules and regulations, including without limitation those relating to installation of Where Tag, operation of the Asset, use of the Where Tag and Where Services, and any Privacy Laws and disclosure laws.

4.6 Downloading Our App. When you download our Where App from the Apple App Store, Google Play or other app store or app distribution platform (an "App Store"), you acknowledge and agree that:



- (a) These Where Terms are concluded between us, and not with the App Store, and that we (not the App Store), are solely responsible for the Where App.
- (b) The App Store has no obligation to furnish any maintenance and support services with respect to Where App or handle any warranty claims.
- (c) The App Store is not responsible for addressing any claims you have relating to Where App, including product liability claims, consumer protection claims, intellectual property infringement claims, or any claim that our App fails to conform to any applicable legal or regulatory requirement.
- (d) The App Store is a third party beneficiary of these Terms and has the right to enforce these Terms against you (as it relates to your licence of Where App through their App Store). You must also comply with the App Store's terms of service when using Where App.

5. PURCHASES, PAYMENT AND FEES

5.1 Where Tag Online Purchase. Where you choose to purchase your Where Tag via our Third Party Provider, you will pay the Where Tag Price for each individual Where Tag purchased at the point of sale by credit or debit card (known as a '**Transaction**'). You acknowledge and agree that we have no liability with respect to any act or omission by our Third Party Provider. When you initiate a Transaction, you authorise our Third Party Provider to provide your payment information to third parties so they can complete your Transaction. You also agree to pay any additional fees including but not limited to freight or delivery payment imposed by the Third Party Provider for the dispatch of the purchased Where Tags to you.

5.2 Where Tag Purchase from EROAD. Where you acquire a Where Tag directly from us, we will invoice you in accordance with clause 5.4 and you will pay the Where Tag Price for each Where Tag purchased from us. You also agree to pay any additional fees including but not limited to freight or delivery payment imposed by us for the dispatch of the purchased Where Tags to you.

5.3 Fees. Fees for each registered Where Tag is payable when an Asset was located by the Mesh Network during a Fee Accrual Period. Therefore, your total monthly Fees may vary for each Fee Accrual Period. For example, if you have 100 registered Where Tags, but only 50 Assets were located by the Mesh Network during the most recently completed Fee Accrual Period, you must pay the Fees for the 50 Where Tags. If during the following Fee Accrual Period, 100 Assets are located by the Mesh Network, you will be required to pay the Fees for the 100 Where Tags.

5.4 Invoicing. At the end of each applicable Fee Accrual Period, EROAD will issue an invoice to the Customer for the total Fees accrued during the Fee Accrual Period in accordance with clause 5.3. An invoice may also contain the Where Tag Price for any Where Tags purchased from EROAD during the Fee Accrual Period. Invoices are payable within 14 days of receipt of such invoice. The Customer can access a detailed itemised view of the Fees on the Website, which is conclusive evidence of the amount payable by you.

5.5 Disputed Charges. If you wish to dispute in good faith the Fees or part of the Fees on an invoice issued by EROAD ('**Disputed Charges**'), you must notify us within one month of the date of the relevant invoice. Should you fail to notify us of the dispute within this period you will not be entitled to dispute the Disputed Charge or make any claims against us in relation to the Disputed Charge.

You may withhold payment of a Disputed Charge if you:

- (a) pay all undisputed charges by the due date, or if no due date is specified, within 14 days of the invoice date; and
- (b) co-operate with us to promptly resolve the Disputed Charge.

If we agree there is a mistake, we will adjust your next invoice or, if appropriate, provide a refund. If we find, acting reasonably and in good faith, there is no mistake we will provide you with the reason for



our decision in writing and, if the due date for payment has already passed, you must pay the amount outstanding within 7 days of us issuing the decision.

5.6 Late payment. All Fees which are:

- (a) not subject to a genuine dispute but remain unpaid 14 days after the due date for payment; or
- (b) disputed under clause 5.5, but which we have determined do not contain an error, that remains unpaid 7 days after the date of our notice to you under clause 5.5,

will incur interest charged at the Interest Rate plus 3% per annum or the maximum rate permitted by law (if less), on a monthly basis from the due date for payment until the date on which you make payment in full to us. In addition to such interest, we may appoint an agent to collect any overdue Fees. You agree to pay any costs that are incurred by such agents in recovering the money you owe or in exercising any other rights, including recovery of commissions and legal costs on a solicitor and client basis. If you fail to pay any undisputed charges 30 days after the due date for payment, you will be in material breach of this Agreement. These remedies are without prejudice to any of EROAD's other remedies under the Agreement or otherwise.

5.7 Changes to Fees. Should we propose any Fee increase, we will give you one months' notice, and the change to Fees will take effect from the Fee Accrual Period following the notice provided.

5.8 Set off. Any credits, allowances or other amounts payable or creditable by us to you will be subject to set off against any claims or other amounts owed by you to us.

5.9 GST

- (a) If GST is payable on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply.
- (b) Unless otherwise stated, all amounts referred to in this Agreement, including the Fees, are stated on a GST exclusive basis.

6 PROPERTY RIGHTS

6.1 Passing of risk. Unless otherwise agreed in writing between us, risk of any loss of, or damage to, Where Tag will pass to you upon the earlier of delivery to your premises, or to a mutually acceptable third party's address, or receipt by you.

6.2 Title. You agree that ownership of each Where Tag will pass to you on full payment of the Where Tag Price.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 EROAD Ownership. The Intellectual Property Rights in the Software, Where Services, Where Tag, Where App or Website are owned by, or are licensed to, EROAD. Any new Intellectual Property Rights that are created as a result of, or in connection with the provision of our Software, Where Services, Where Tag, Where App or Website are owned by us, unless specified otherwise in this Agreement. You acknowledge that all Intellectual Property rights in our Where Services, Where App, Website, Software, Where App and Where Tag, including the underlying software and technology and the information and content available under this Agreement, are owned by us and our Third Party Providers and are protected by law throughout the world.

7.2 No Copying. You will not reproduce, translate, adapt, reverse engineer, make derivative works from or modify any component of or documentation relating to the Website, Where App, Where Tag, Software or the Where Services.



7.3 Trade marks. You have no right to use EROAD's trade marks, unless you are granted in writing a limited, non-exclusive licence to reproduce EROAD's trade marks in marketing materials in accordance with EROAD's guidelines.

7.4 Third Party Trade marks

Apple and the Apple logo are trademarks of Apple Inc., registered in the U.S. and other countries. App Store is a service mark of Apple Inc. Google Play, the Google Play logo, and Android are trademarks of Google Inc. The Bluetooth® word mark and logos are registered trademarks owned by Bluetooth SIG, Inc. and any use of such marks by EROAD is under licence. All other trade marks and trade names are properties of their respective owners. and any use of such marks by EROAD is under license. All other trade marks and trade names are properties of their respective owners.

7.5 Infringement. EROAD will defend or settle, at EROAD's sole cost, any claim that the Where Tag, Software, Where App, Website or Where Services infringe any other person's Intellectual Property Rights, provided that (1) EROAD has full control of the conduct of the defence or settlement; and (2) the claim does not arise from a breach by you of any of these Where Terms or the Agreement.

8 DATA, CONFIDENTIALITY AND PRIVACY

8.1 Data. During your relationship with us we, or a Third Party Provider, may collect, create and generate Data. During the Term and subject to you meeting your obligations under this Agreement, we authorise you to access Data made available through the Where Services. We will use reasonable commercial endeavours to maintain a back-up of Data.

8.2 Use and Disclosure of Data. We may:

- (a) hold the Data and share it with our employees, Affiliates, other agents and service providers approved by us but only to the extent necessary to enable us to offer or provide you the Where Services, send you invoices, check that your responsibilities are being met, or otherwise to administer and enforce the Agreement; and
- (b) use, copy, modify, store, disclose and communicate the Data to the extent necessary to enable you to use the Where Services.

8.3 Anonymous Data. Subject to any Personal Information having been removed, EROAD may aggregate the Data with other data for EROAD's internal purposes, reporting industry-specific statistics and trends, for sharing with third parties. We may receive consideration from third parties for such services.

8.4 Privacy Policy. We maintain a Privacy Policy that sets out the parties' obligations in respect of personal information and Data. We encourage you to read that policy at Privacy Policy. The Privacy Policy forms part of the Agreement.

8.5 Confidentiality. We will:

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

8.6 Privacy. You:

- (a) must comply with EROAD's Privacy Policy, the Privacy Act (as though you were subject to the Privacy Act) and any additional Privacy Law by which you are bound;
- (b) must, both during and after the term of the Agreement:
 - (i) take all reasonable steps to ensure that Personal Information is protected against misuse and loss, or unauthorised use, access or disclosure, including by not disclosing any Personal Information to a third party without authorisation;
 - (ii) not do anything which may cause EROAD to breach any Privacy Law; and
 - (iii) if requested by EROAD, co-operate with EROAD to resolve any complaint or investigation



under any Privacy Law, and provide other reasonable assistance.

- (c) acknowledge that EROAD may provide the services under the Agreement, from any locations, or through the use of contractors, worldwide; and
- (d) agree to provide any information, and to obtain any consents, relevant to your use of our Where Services, Where App, Website, Software, Where App and Where Tag, including those in relation to collection, use, disclosure and storage of Personal Information of any individual whose Personal Information may be included in the Data.

9 TERMINATION

- 9.1 Termination for convenience.** Either party may terminate this Agreement at any time by giving the other party 30 days' notice in writing.
- 9.2 Termination by us.** We may suspend, reduce or terminate the Where Services immediately by giving you written notice if: (a) you breach the Agreement and either (i) fail to remedy the breach within 10 days of receiving notice of the breach from us, or (ii) the breach is not capable of being remedied; or (b) you become insolvent or if you make an assignment for the benefit of creditors.
- 9.3 Termination by you.** You may terminate the Where Services immediately by giving us written notice if: (a) we breach the Agreement and either (i) fail to remedy the breach within 10 days of receiving notice of the breach from you, or (ii) the breach is not capable of being remedied; or (b) we become insolvent.
- 9.4 Effect of termination.** On termination of the Where Services we will cease providing, and you will cease using Where Services. Where EROAD terminates, suspends or reduces the Where Services, you will remain liable for payment of all unpaid Fees (including unpaid Where Tag Prices).

10 WARRANTIES & RETURNS POLICY

- 10.1 Where Tag Warranty.** We warrant that the Where Tag will be free from material manufacturing defects for one year from the Commencement Date.
- 10.2 Where Services Warranty.** We warrant that we have the authority to make the Where Services available to you.
- 10.3 Warranty exclusions.** The warranty in clauses 10.1 and 10.2 will not apply if:
 - (a) the Where Tag has been improperly installed by you; or
 - (b) the Where Tag has been altered by you or any other unauthorised person; or
 - (c) the Where Tag has been subjected to abuse, misuse, neglect, or accident; or
 - (d) you are in breach of clause 4.3.
- 10.4 Where App Warranty.** We will use reasonable efforts to correct any discovered defects in the Where App. However, to the maximum extent permitted by applicable law, your access to, and use of Where App, is at your own risk. We are not responsible for the content provided by, or the conduct of, any user and you bear the entire risk of using Where App, and any interactions with other users. As the Where Tag is not designed to, nor does it provide any real-time tracking capabilities, we disclaim any liability resulting from any use of Where App.
- 10.5 Returns Procedures.** Pursuant to clause 10.1, the following steps set out how you may return your Where Tag, if it is found to have a material manufacturing defect:
 - (i) Contact EROAD with the invoice number and the nature of the fault as soon as possible.
 - (ii) Organise the return of the Where Tag to Unit 14, 906-930 Great South Road, Penrose ('EROAD's offices') This will be at your cost.
 - (iii) Allow at least 5 working days for EROAD to complete an assessment of the fault.
 - (iv) The Where Tag may either be repaired or replaced, at EROAD's discretion.



- (v) EROAD will organise the delivery of either the replacement or the repaired Where Tag to your preferred location.

10.6 No Refund or Returns for change of heart. EROAD does not provide refunds or accepts returns, if you change your mind about your Where Tag purchase.

11. INDEMNITY AND LIABILITY

11.1 Other warranties excluded. All of our products and services are provided “as is”. Except for the warranties, representations and commitments set out in this Agreement and any warranties that may not lawfully be excluded, EROAD expressly disclaims all representations, commitments and warranties (statutory, express or implied), including all warranties of merchantability, fitness for a particular purpose or accuracy of the Where Tag, Where Services or Where App, non-infringement and against hidden defects.

11.2 No liability. To the maximum extent permitted by law, neither party will be liable to the other in contract, tort (including negligence), under statute, or otherwise, for:

- (a) any breach of this Agreement to the extent that the breach is attributable to the default, negligence, misconduct or breach of the other party, its employees or agents; or
- (b) any loss of Data or information, any loss of profits, revenue, or opportunities, or any indirect, special, punitive or consequential loss or damage, resulting directly or indirectly, from any use of, or reliance on, the Where Tag, Where Services, Software, Website or Where App.

11.3 Indemnity. To the extent permitted by law, you will indemnify EROAD from and against any direct and reasonable claims, damages, penalties, expenses or costs (including lawyer fees), arising from (1) your unauthorised use of the Where App, Website, Where Tag, Software or Where Services; (2) your intentional breach of the Agreement or wilful omission by you or Authorised Users; (3) a third party claim that (i) our refusal to provide any person access to Data, or (ii) our provision of Data to any person authorised by you to receive it, is in breach of the Privacy Laws; and (4) a third party claim that, due to your (or anyone for whom you are responsible) negligence or wilful misconduct, the Where Tag has caused bodily injury, death or physical damage to the property of any person.

11.4 Remedies. In the event that you make a warranty claim under this Agreement, but subject to the exclusions set out in clause 10.3, your sole and exclusive remedy is that during the warranty period we will, at our sole discretion, repair or replace any defective Where Tag. Your right to make a warranty claim is conditional upon you promptly notifying us in writing of the defect or failure and giving us a reasonable opportunity to investigate and remedy any defect or failure relating to such Where Tag or Where Services (as appropriate). We will not be liable under this clause or obligated to perform any tasks under this clause 11.4 if the defect or failure cannot be verified or reproduced by us.

11.5 Liability limited to Fees. If, despite clauses 11.2 to 11.4, we are found liable to you for any loss or damage, that liability will not exceed the Fees actually paid by you to us for the affected Where Services in the one month period immediately prior to the date liability first arose.

12. GENERAL

12.1 Entire Agreement. The Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous agreements, understandings, negotiations, discussions, and commitments, whether written or oral.

12.2 Change of Where Terms. We may change these Where Terms at any time by any method we consider reasonable in the circumstances, including by publishing the updated Where Terms on the Website. Your continued use of the Where Services, Where App or Website will constitute acceptance of the amended Where Terms.



- 12.3 No reliance.** Each party acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any representation or warranty not set out in this Agreement.
- 12.4 Force majeure.** Notwithstanding anything to the contrary in this Agreement, neither party will be liable for any failure or delay in complying with any obligation under this Agreement (excluding any payment obligation) if:
- (a) the failure or delay arises directly from a Force Majeure Event;
 - (b) that party, on becoming aware of the Force Majeure Event, promptly notifies the other party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that party to mitigate or remedy the Force Majeure Event;
 - (c) that party uses its reasonable endeavours to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement;
 - (d) that party performs that party's obligations which are not affected by the Force Majeure Event; and
 - (e) performance of any obligation affected by a Force Majeure Event is resumed as soon as practicable after the end of the Force Majeure Event. However, in event of a Force Majeure Event that persists for ninety (90) days or more, then either party may terminate this Agreement upon written notice to the other party.
- 12.5 Contracting out.** To the extent permitted by law, where the Where Tag and Where Services are acquired in trade by a Customer who is in trade, EROAD and the Customer agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986 and the Consumer Guarantees Act 1993 and the parties agree that it is fair and reasonable that they be bound by this clause. Further, EROAD and the Customer agree to contract out of sections 109, 111, 114(1)(a), 122 and 128 of the Personal Property Securities Act 1999.
- 12.6 Governing Law.** These Terms are governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand courts.
- 12.7 Survival.** Clauses 5.8, 6, 8, 9.4, 11, 12.4, 12.5, 12.6 and 12.7 will survive termination of the Agreement.