

Terms and conditions

DIT has developed the Telematics Solution, which is a cloud based fleet telematics and sensor coupling solution. The Customer wishes to access and use the Telematics Solution and receive the Services from DIT. This agreement sets out the terms and conditions on which DIT will provide the Customer with access to and use of the Telematics Solution and other Services.

1. Definitions and interpretation

In this agreement, unless the context otherwise requires:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Authorised Users means the employees, officers, agents, contractors and representatives of the Customer who are authorised by the Customer to access and use the Telematics Solution.

Authentication Credential means the username and password or other means of authentication which Authorised Users are required to provide in order to be able to access the Telematics Solution.

Business Day means a day on which banks are open for business in Melbourne, other than a Saturday, Sunday or public holiday.

Commencement Date means the date specified in the Schedule.

Confidential Information means all documents, know-how, plans, drawings, specifications, designs, ideas, trade secrets and all other information whatsoever pertaining to the disclosing party or the business of the disclosing party (and in the case of DIT includes the Documentation) but does not include information which:

- (a) the recipient can prove was in the lawful possession of the recipient before the disclosing party had any dealings with the recipient or was independently generated by the recipient or on its behalf;
- (b) is in the public domain otherwise than as a result of a breach of this agreement or any other obligation of confidentiality owed to the disclosing party; or
- (c) was legally and properly obtained by the recipient from any other source without restriction on further disclosure.

Consequential Loss means:

- (d) any form of indirect, special or consequential loss;
- (e) any loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (f) any loss beyond the normal measure of damages.

Customer means the entity set out in the Schedule.

Data means all information and data:

- (g) collected from the Devices that have been installed on or in the Vehicles; and
- (h) generated by the Telematics Solution and which is made available to the Customer and Authorised Users through the Telematics Solution.

DIT means Data Intrans Pty Ltd (ACN 626 791 884) of Unit32, 1 International Drive, Victoria 3049.

Device means a device that is supplied by DIT to the Customer to be installed by DIT or the Customer in a Vehicle for use with the Telematics Solution.

Device Price means the price payable by the Customer for the purchase of a Device, as specified in the Schedule or otherwise notified to the Customer at or about the time the Customer places an order for the purchase of Devices.

Device Services means the services described in clause 4.1.

Device Term means, in respect of each Device acquired or leased under this agreement, the Initial Device Term and any Further Device Term(s).

Documentation means any manuals, guides, reference materials or other similar documents in any form made available by DIT to the Customer in connection with the Telematics Solution or the provision of the Services.

Force Majeure Event means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared) civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood, earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment.

Further Device Term means the period of time specified in the Schedule.

Improvement means all improvements, enhancements, modifications, adaptations and extensions, whether being capable of patent or other Intellectual Property protection or otherwise and whether made or conceived by DIT or the Customer.

Initial Device Term means the period of time specified in the Schedule.

Installation Fee means the amount, if any, set out in the Schedule and any reasonable costs incurred by DIT arising from a failure of the Customer to comply with any of its obligations under clause 5.6(b).

Intellectual Property means all rights conferred under statute, common law or equity in any jurisdiction, whether existing now or in the future and whether or not registered or registrable, in relation to trade marks, copyright, patents, patentable inventions, designs, trade secrets and database rights, together with the right to apply for the registration or grant of any such intellectual property.

Lease Agreement means an agreement (if any) between DIT and the Customer in respect of the lease of Devices.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Personal Information means information that is personal information for the purposes of, or otherwise protected under, the Privacy Laws and which a party collects, uses, discloses or otherwise handles in the course of or in connection with this agreement.

Privacy Laws means any applicable law, statute, regulation, ordinance, code, standard or requirement of any government, governmental or semi-governmental body which relates to privacy, data security or personal information including the *Privacy Act 1988* (Cth), any applicable APP Code under the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth), as amended from time to time.

Rent means the rent payable by the Customer for the lease of a Device under the Lease Agreement.

Services means the Device Services and the Telematics Services.

Solution Fees means the fees payable by the Customer for the provision of the Telematics Services, as specified in the Schedule.

Telecommunications Network means a telecommunications service or network and all associated power supplies, satellite signals, hardware and other software.

Telematics Services means the services described in clause 4.2(a).

Telematics Solution means the fleet telematics and sensor coupling solution, as detailed in the Schedule, including any Update to that solution implemented by DIT pursuant to clause 4.5 and any Improvement to that solution supplied to the Customer by DIT.

Third Party Application means any product, service, system, application or internet site integrated or interfaced with the Telematics Solution that is owned or operated by a Third Party Provider, and that is used by the Customer or any Authorised User in connection with the Telematics Solution or the Devices.

Third Party Provider means any third party that provides support, technology and/or other products or services that are used by the Customer or any Authorised User in connection with the Telematics Solution or a Device (including any provider of a Third Party Application).

Term means the period beginning on the Commencement Date and ending at the termination or expiry of the last Device Term.

Vehicle means a motor vehicle and any other equipment or machinery owned or operated by the Customer for or in respect of which the Services are provided.

2. Interpretation

In this agreement, headings are inserted for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (d) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a

trustee, a trust, an association (whether incorporated or not), a government and a government authority;

- (e) all monetary amounts are in Australian dollars, unless otherwise stated and a reference to payment means payment in Australian dollars; and
- (f) no provision of this agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement.

3. Term of agreement

This agreement commences on the Commencement Date and will continue until the conclusion of the Term unless terminated earlier in accordance with this agreement or at law.

4. Services

4.1 Provision of Devices Services

During the Term, DIT will:

- (a) supply Devices to the Customer in accordance with clause 5; and
- (b) if DIT is required to install the Devices under clause 5.6(a), install the Devices in the Vehicles.

4.2 Provision of Telematics Services

- (a) In respect of any Device which is acquired by or leased to the Customer under this agreement, during the Device Term for that Device, DIT will:
 - (i) set up and make the Telematics Solution available for use by the Customer and its Authorised Users in respect of that Device (provided that any set up other than DIT's standard set up will be an additional service subject to agreement between the parties); and
 - (ii) provide the Customer and its Authorised Users with access to the Telematics Solution during the Term in respect of that Device.
- (b) At the expiry of the Initial Device Term or any Further Device Term, the Device Term in respect of a Device and the provision of Telematics Services under clause 4.2(a) in respect of that Device will automatically renew for a Further Device Term, unless a party provides written notice to the other party at least 90 days prior to the expiration of the Initial Device Term or the then current Further Device Term (as the case may be) that the Device Term will not be renewed and will instead expire at the end of the Initial Device Term or that Further Device Term (as applicable).
- (c) If a Device Term is renewed for any Further Device Term pursuant to clause 4.2(b) the provisions of the Telematics Services for that Device under this agreement will continue in effect throughout the duration of the Further Device Term including the provisions regarding renewal in clause 4.2(b).

4.3 Authorised Users

The Customer agrees that it must ensure that each Authorised User complies with all the provisions of this agreement and all acts and omissions of an Authorised User will be deemed to be acts and omissions of the Customer for the purpose of this agreement and the Customer will be liable for all acts or omissions of any Authorised User as if they were the acts or omissions of the Customer.

4.4 Features of Telematics Solution

The Customer acknowledges that, provided the Telematics Solution continues to include or otherwise provide the material features, functions and other benefits described in the Schedule, DIT retains the sole discretion regarding the features, functions and other benefits of the Telematics Solution and DIT may at any time vary, modify, update, upgrade or suspend the features, functions and other benefits available to the Customer in respect of the Telematics Solution or the Customer's access to or use of the Telematics Solution.

4.5 Updates

The Customer acknowledges that, except as expressly set out in this agreement as part of the Services, nothing in this agreement imposes any obligation on DIT to develop, release or install for the Customer any updates, upgrades, patches, bug fixes, new releases or new versions in respect of the Telematics Solution (**Updates**), provided however that if DIT does develop or release any Updates, it may require that all such Updates be used by the Customer and any Authorised User.

4.6 Third Party Applications

The Customer acknowledges that:

- (a) the Telematics Solution may interact with Third Party Applications or require Third Party Applications or Third Party Providers be used to provide particular features or functionality;
- (b) access to such Third Party Applications or services and any support for such Third Party Applications or services must be obtained directly from the relevant Third Party Provider at the Customer's cost and may be subject to the terms and conditions of the Third Party Provider; and
- (c) DIT does not make any representations or warranties regarding any such Third Party Applications or services and will not be responsible for any issues in respect of Third Party Applications or services or any loss suffered by the Customer in connection with any Third Party Applications or services or the Customer's dealings with Third Party Providers.

5. Devices

5.1 Devices available

The Customer acknowledges and agrees that Data will only be collected in respect of any Vehicle which is fitted with a Device and the Customer must either:

- (a) acquire Devices from DIT in accordance with clause 5.4; or
- (b) lease Devices from DIT in accordance with the clause 5.5.

5.2 Customer's obligations

The Customer must not, and must procure that the Authorised Users do not, reconfigure, reprogram, repurpose, or otherwise interfere with the ordinary operation of any Device or any software incorporated as part of the Device or remove any Device from a Vehicle without the prior written consent of DIT.

5.3 Risk and title to Devices

- (a) Title to any Devices:
 - (i) if supplied under clause 5.4, passes to the Customer upon payment in full by the Customer to DIT of the Device Price for the Device; and
 - (ii) if supplied as part of a Lease, does not pass to the Customer.
- (b) Risk of loss or damage to the Devices transfers to the Customer on the earlier of delivery of the Device to the Customer and installation of the Device in a Vehicle.

5.4 Acquisition of Devices

- (a) The parties agree that at the Commencement Date DIT will supply to the Customer, and the Customer will acquire, the number of Devices (if any) set out in the Schedule (if any) in consideration for the Customer paying the Device Price in respect of each Device.
- (b) DIT and Customer may, from time to time throughout the Term, agree for DIT to supply the Customer with additional Devices on the terms of this agreement.
- (c) The Customer must pay to DIT the Device Price for any Devices acquired from DIT in accordance with clause 11.2(c).

5.5 Leasing of Devices

- (a) The parties agree that at the Commencement Date DIT will lease to the Customer the number of Devices set out in the schedule (if any) on the terms of this agreement and the Lease Agreement in consideration for the Customer paying the rent set out in the Lease Agreement in respect of each Device.
- (b) DIT and the Customer may, from time to time throughout the Term, agree for DIT to lease to the Customer additional Devices on the terms of this agreement and the Lease Agreement.
- (c) This clause 5.5 applies to any Device which DIT has agreed to supply to the Customer as part of a Lease (including those leased under clause 5.5(a)).
- (d) DIT agrees to lease the Device to the Customer for the Device Term for that Device and the Customer agrees to lease the Device from DIT for the Device Term in accordance with the terms of this agreement and the Lease Agreement.
- (e) The Customer is entitled to use the Device for the Device Term, subject to the terms and conditions of this agreement and the Lease Agreement.
- (f) Without limiting its obligations under the Lease Agreement, the Customer must, at its own cost and expense:

- (i) take all reasonable precautions to safeguard the Device from theft, damage or loss while it is in the Customer's possession or under its control or direction;
 - (ii) not damage the Device;
 - (iii) report any damage to, or loss or theft of, the Device to DIT immediately upon such occurrence; and
 - (iv) not repair or make alterations to the Device without DIT's prior consent.
- (g) The Customer must provide DIT with access to the Vehicles at all reasonable times requested by DIT to allow DIT to inspect or observe the use of the Device in the Vehicles.
- (h) The Customer must return the Device to DIT at the end of the Device Term for that Device in the same condition and state of cleanliness (except for normal wear and tear) as at the date the Device was provided to the Customer by DIT.

5.6 Installation

- (a) Unless otherwise agreed, the party set out in the Schedule will be responsible for installing the Devices in the Vehicles.
- (b) If DIT is required to install the Devices in the Vehicles, the Customer must:
- (i) provide DIT with access to the Vehicles at all reasonable times requested by DIT to allow DIT to complete the installation of the Devices in the Vehicles;
 - (ii) ensure that the Vehicles are presented in a clean and tidy state suitable for installation of the Devices; and
 - (iii) if the Vehicles are to be delivered to DIT for the installation, the Vehicles are provided at the time agreed for delivery of the Vehicles.
- (c) If the Customer is required to install the Devices in the Vehicles, the Customer must carry out such installation in accordance with the Documentation and any other instructions or directions provided by DIT in respect of the installation.
- (d) The Customer acknowledges that it shall not be relieved from any obligation to pay any Solution Fees, Installation Fees, Device Price or Rent under this agreement if the Devices have not been installed in the Vehicles because:
- (i) if the Customer is required to install the Devices, the Customer has not yet installed the Devices;
 - (ii) if DIT is required to install the Device, DIT has not yet installed the Devices because the Customer has not provided DIT with adequate access to the Vehicles; or
 - (iii) installation has otherwise been delayed due to an act or omission of the Customer.

6. Authentication Credentials

6.1 Provision of Authentication Credentials

On request from the Customer from time to time, DIT may provide the Authorised Users with Authentication Credentials in order for the Authorised Users to access the Telematics Solution.

6.2 Obligations of the Customer

The Customer must:

- (a) ensure that each Authentication Credential is securely maintained and used only by the Authorised User to whom the Authentication Credential has been issued; and
- (b) comply with any policies, guidelines or other requirements issued by DIT from time to time in any way relating to Authentication Credentials.

6.3 Management of Authentication Credentials

DIT reserves the right at any time and from time to time to change and/or revoke Authentication Credentials by providing the Customer with written notice.

7. Customer obligations and responsibilities

7.1 Obligations

During the Term, the Customer must:

- (a) satisfy itself that the Telematics Solution and the Devices are fit for all the purposes which the Customer requires it for and are compatible with its own hardware, software and internet and network capabilities;
- (b) provide all co-operation, assistance, system access and other inputs reasonably requested by DIT in relation to the provision of the Services;

- (c) ensure that the use of the Telematics Solution and Devices by the Customer and each of its Authorised Users complies with all applicable laws, regulations or codes of conduct;
- (d) not:
 - (i) attempt to circumvent or break any encryption, decryption or other security device or technological protection measure in the Telematics Solution or any Device;
 - (ii) modify, adapt, translate, reverse engineer, de-compile, disassemble, copy or create derivative works from all or any part of the Telematics Solution or any Device;
 - (iii) distribute, transfer, assign, rent, lease, lend, sell, licence or otherwise dispose of all or any part of the Telematics Solution or any Device; and
 - (iv) without limiting its obligations under clause 16, make any part of the Telematics Solution publicly available;
- (e) use the Telematics Solution and Devices only for the purpose of managing its fleet of Vehicles for its internal business purposes;
- (f) not use the Telematics Solution or any Device in any way that infringes a third party's Intellectual Property or other rights or use the Telematics Solution or any Device in any manner which is unlawful, offensive, threatening, defamatory, fraudulent, misleading, deceptive or otherwise inappropriate;
- (g) use up-to-date commercially available systems to protect the security of its information technology infrastructure; and
- (h) at its own cost, procure and maintain appropriate insurance policies including public liability insurance and motor vehicle third party liability and property damage insurance which are required by law and consistent with reasonable commercial practices.

7.2 Responsibilities

During the Term, the Customer is responsible for:

- (a) subject to clause 8(a), maintaining all hardware, software and other technology necessary for the Customer to be able to access and use the Telematics Solution;
- (b) the day to day use of the Telematics Solution;
- (c) obtaining all consents, authorisations, licences, permits or approvals necessary to access and use the Telematics Solution as contemplated by this agreement and for DIT to be able to collect, hold, store and disclose the Data and otherwise provide the Services to the Customer as contemplated in this agreement; and
- (d) any acts or omissions committed by the Authorised Users or the other employees, officers, contractors or representatives of the Customer or any of its related parties in relation to the Telematics Solution and the Devices.

7.3 Use of Telematics Solution and Devices

The Customer must not use the Telematics Solution or any Device:

- (a) in any way which does or could impair or damage any Telecommunications Network or that could interfere with other users' use of the Telecommunication Network;
- (b) to attempt to penetrate security measures whether or not the intrusion results in the corruption or loss of data; or
- (c) in a manner that could lead to death, personal injury, or severe physical injury or environmental damage due to the failure of Telematics Solution.

7.4 Documentation

The Customer must use only the most recent version of the Documentation provided by DIT and must follow DIT's instructions regarding the return or destruction of any superseded versions of the Documentation.

8. Dependence on Telecommunications Network

The Customer acknowledges and agrees that:

- (a) Telecommunications Network services for use with the Telematics Solution will be acquired from a Third Party Provider of a Telecommunications Network by either the Customer or DIT as set out in the Schedule;
- (b) the Telematics Services, and in particular the transmission of Data from the Device to the Telematics Solution, is dependent upon the provision of an uninterrupted Telecommunications Network, which will be owned, controlled or operated by third

parties, subject to statutory control, or which may operate under government granted licences or permits;

- (c) the availability or accuracy of Data and other information provided by the Telematics Solution may be interrupted, distorted, disrupted or degraded from time to time as a result of events such as, but not limited to, disruption to satellite signals, unavailability of telecommunications services or signals, disruptions to the internet or to servers, or otherwise adversely affected by the physical and geographic nature of the locality, the presence of buildings and other structures and features, natural and man-made radio interference and the effects of the atmosphere;
- (d) given the matters outlined in clauses 8(b) and 8(c), the Customer should not use the Telematics Solution for any time critical functions;
- (e) the Customer must not interfere with or disrupt (or attempt to interfere or disrupt) any Telecommunications Network;
- (f) whilst the Third Party Provider of a Telecommunications Network may embed security in its Telecommunications Network, data transmitted over the Telecommunications Network using the Devices and Telematics Solution may be intercepted by third parties without the knowledge of the Third Party Provider or DIT; and
- (g) as DIT does not operate or provide a Telecommunications Network, DIT cannot and does not guarantee that the Customer's use of the Telematics Solution, any related Device, or any Telecommunications Network services, will be secure, uninterrupted or error free or that there will be no inaccuracy, degradation or failure of or in the Services due to any issues in respect of a Telecommunications Network.

9. Privacy

- (a) DIT and the Customer must each comply with their respective obligations under the applicable Privacy Laws.
- (b) Without limiting clause 9(a) or any other obligations of the Customer under this agreement, the Customer:
 - (i) is responsible for ensuring that it obtains all consents, permissions or authorisations from the drivers and other users of Vehicles and provides all notices to the drivers of the Vehicles necessary for DIT to be able to provide the Services and collect, store, disclose and use the Data as contemplated in this agreement or as required by applicable law (including any Privacy Law, employment law or surveillance laws); and
 - (ii) must co-operate with DIT to resolve any complaint made against either DIT or the Customer under any Privacy Law.

10. Data

10.1 Acknowledgements regarding Data

The Customer acknowledges and agrees that:

- (a) the Data is based on information and data which is collected from the Devices that have been installed in the Vehicles;
- (b) DIT does not guarantee the accuracy, completeness or currency of any Data;
- (c) DIT retains complete discretion regarding the type of Data which will be made available through the Telematics Solution and the format in which such Data will be made available; and
- (d) to the maximum extent permitted by law, DIT makes no representations either expressly or impliedly concerning any Data.

10.2 Data Security

DIT does not guarantee the security and safety of the Data and, provided DIT takes reasonable steps to protect the security and safety of the Data, DIT will not be liable for any loss suffered by the Customer which arises out of or in connection with:

- (a) any computer viruses being transferred by or obtained as a result of the use of the Telematics Solution;
- (b) any hacking into or other similar attacks on the Telematics Solution or DIT's information technology infrastructure; or
- (c) any other data security issues in respect of the Telematics Solution or DIT's information technology infrastructure.

10.3 Back ups and archiving

- (a) The Customer acknowledges that DIT does not provide back up, archiving, record keeping or other similar services in respect of the Data and the Customer is responsible for implementing and maintaining its own back up, archiving, record keeping and data retrieval procedures in respect of the Data.
- (b) Notwithstanding clause 10.3(a), the Customer acknowledges and agrees that, subject to any applicable laws which may require the return, deletion or destruction of the Data, DIT may keep and maintain copies of the Data.

11. Fees

11.1 Fees payable

During the Term, the Customer agrees to pay to DIT:

- (a) the Solution Fees;
- (b) if DIT is required to install the Devices under clause 5.6(a), the Installation Fee for those Devices;
- (c) if the Customer acquires any Devices under clause 5.4, the Device Price for those Devices; and
- (d) if the Customer is leasing any Devices under clause 5.5, the Rent for those Devices,

and any other amounts which may become payable to DIT under this agreement.

11.2 Payment Terms

- (a) Solution Fees will be payable by the Customer in accordance with the payment terms specified in the Schedule.
- (b) The Installation Fees in respect of a Device will be payable by the Customer within 30 days of the date of installation.
- (c) The Device Price for a Device will be payable by the Customer in accordance with the payment terms specified in the Schedule.
- (d) Rent will be payable by the Customer in accordance with the payment terms specified in the Lease Agreement.

11.3 Failure to pay

If the Customer fails to pay the Solution Fees, Installation Fees, Device Price, Rent or any other amounts due to DIT under this agreement or the Lease Agreement then, without prejudice to DIT's other rights:

- (a) DIT may charge the Customer interest on all amounts overdue at the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic), which interest will accrue and be chargeable from the first day on which such amounts become overdue until DIT receives effective payment of all such amounts (including all interest); and
- (b) DIT may issue a notice to the Customer stating that the relevant amount is overdue (**Overdue Notice**) and, without limiting its other rights, if DIT does not receive payment of the relevant outstanding amount within 14 days of the date of the Overdue Notice, DIT may cease providing the Telematics Services and suspend the Customer's access to the Telematics Solution until such time as the outstanding amount is paid in full (together with any interest) and DIT will not be liable for any loss suffered by the Customer as a result of DIT exercising its rights under this clause 11.3(b).

12. GST

In this clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act. Unless otherwise expressly stated in writing in this agreement, all amounts payable by the Customer in connection with this agreement do not include an amount for GST. If GST is payable on any supply made by DIT under this agreement, the Customer must pay to DIT, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by this agreement to reimburse or indemnify DIT for any loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that DIT will be entitled to claim for the loss or amount incurred and increased by the amount of any GST payable by DIT in respect of the reimbursement or payment.

13. Intellectual Property in Telematics Solution, Devices and Data

- (a) The Customer acknowledges that nothing in this agreement grants the Customer any ownership of, or rights in respect of, the Intellectual Property in the Telematics Solution, the Devices, Data, any Documentation, any Intellectual Property in any

materials created as a result of the performance of the Services or any Improvements to the Telematics Solution, the Devices, Data or Documentation created in connection with this agreement.

- (b) Any Intellectual Property in respect of the Telematics Solution, the Devices, Data or Documentation (including in any Improvements) which is created by or vests in the Customer during the Term is assigned to DIT immediately upon the Intellectual Property being created or vesting in the Customer and the Customer agrees to do all things and execute all documents as is reasonably necessary to effect such assignment.
- (c) During the Term DIT grants the Customer a limited, non-exclusive and revocable licence to use the Intellectual Property referred to in clause 13(a) solely to the extent such use is necessary for the Customer to manage its fleet of Vehicles for its internal business purposes. Unless revoked earlier by DIT, the licence granted under this clause 13(c) terminates immediately upon the termination or expiry of this agreement.

14. PPSA

- (a) Words and expressions used in this clause 14 which are not defined in this agreement but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
- (b) The Customer acknowledges that:
 - (i) the supply of Devices and the agreement for the lease of Devices under this agreement creates a registrable security interest under the PPSA in the Devices and the proceeds of the Devices and that it has not agreed to postpone the time for attachment of that security;
 - (ii) the security interests created under this agreement attach to the Devices and the proceeds of the Devices in accordance with the PPSA;
 - (iii) value has been given for the creation of the security interests; and
 - (iv) where DIT has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply.
- (c) DIT is not obliged to act in any way to dispose of or to retain any Device which has been seized by DIT or any person nominated by DIT under its rights under the PPSA.
- (d) Without limiting anything else in this agreement, the Customer consents to DIT effecting a registration on the Personal Property Securities Register (**PPSR**) in relation to any security interest created by or arising in connection with, or contemplated by, this agreement, including in relation to the Devices. The Customer agrees to promptly do all things necessary to ensure that any security interest created under this agreement is perfected and remains continuously perfected, DIT's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- (e) The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by DIT for that purpose in relation to the Devices).
- (f) The Customer must indemnify, and on demand reimburse, DIT for all expenses incurred in the registration and enforcement of any rights arising out of any of DIT's security interests.
- (g) The Customer must not change its name, ACN, ABN, address or contact details without providing prior written notice to DIT and must not register a financing change statement or a change demand covering the Devices without DIT's prior written consent.
- (h) The Customer must not without DIT's prior written consent, sell, lease, sublicense, assign, dispose of, create a security interest in, mortgage or part with possession of the Devices or any interest in it (or purport or attempt to purport to do any of those things) or permit any lien over the Devices.
- (i) The Customer must notify DIT as soon as it becomes aware if any personal property which does not form part of the Devices becomes an accession to the Devices or if any of the Devices are situated outside Australia or, on request by DIT, of the present location or situation of the Devices.

- (j) The Customer must keep full and complete records of the Devices.
- (k) The Customer must authorise DIT to apply any money DIT receives from the Customer towards debts, charges and expenses in any priority DIT determines in its sole discretion for whatever reason, including in order to maintain the security interest created by this agreement.
- (l) The Customer must immediately return the Devices if requested to do so by DIT following non payment of any amount owing by the purchaser to DIT or following breach of any other obligation to DIT.
- (m) To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- (n) The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if DIT has given prior written consent.

15. Termination and suspension

15.1 Suspension

DIT may, at any time, by reasonable notice to the Customer where reasonably possible, temporarily, or indefinitely, suspend, disable or terminate the Customer's and any Authorised User's access to the Telematics Solution (or any part of it), if any one or more of the following applies:

- (a) such suspension or termination is reasonably required for the maintenance (including preventative and routine maintenance), support, operation or security of the Telematics Solution;
- (b) DIT believes on reasonable grounds that the Customer is in breach of any provision of this agreement;
- (c) DIT believes on reasonable grounds that the Customer does not have all necessary consents, authorisations, licences, permits or approvals to perform its obligations under this agreement or to use the Telematics Solution (including any required under clause 9(b)(i));
- (d) DIT believes on reasonable grounds that the Customer has engaged in any conduct which may bring DIT or the Telematics Solution into disrepute; or
- (e) such suspension or termination is required by the operator or owner of any Telecommunications Network or any government authority.

15.2 Termination of agreement with cause

Either party may, by written notice to the other party, terminate this agreement with immediate effect if:

- (a) the other party fails to comply with any written notice issued by a party requiring the other party to remedy a breach, non-observance or non-performance of the other party's material obligations under this agreement within 10 Business Days of the other party receiving the notice;
- (b) the other party commits a breach of a material term of this agreement which is incapable of remedy; or
- (c) the other party is the subject of an insolvency event.

15.3 Consequences of termination or expiry of agreement

- (a) Upon termination or expiry of this agreement taking effect:
 - (i) the Device Term for each Device terminates;
 - (ii) each Lease Agreement terminates with effect from the date this agreement terminated or expired;
 - (iii) the Customer must immediately:
 - (A) cease using and ensure that each of its Authorised Users ceases using the Telematics Solution and any Devices;
 - (B) pay to DIT all Solution Fees, Installation Fees, Device Price, Rent, expenses or other sums payable to DIT under this agreement or the Lease Agreement which have accrued or are payable as at the date of termination or expiry;
 - (C) return to DIT any Documentation in the Customer's possession or control; and

- (D) return to DIT any and all Devices in the Customer's possession or control which were supplied to the Customer under the Lease Agreement;

- (iv) DIT ceases to have any obligations under this agreement with respect to the provision of Services; and
- (v) DIT may disable the Customer's access to the Telematics Solution and disable all Authentication Credentials of the Customer and the Authorised Users.

- (b) Termination or expiry of this agreement does not affect any accrued rights or remedies of any party.
- (c) The termination or expiry of this agreement does not operate to terminate any rights or obligations under this agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned.

15.4 Termination of a Device Term

Either party may, by written notice to the other party, terminate a Device Term for a Device:

- (a) if the Lease Agreement for that Device is terminated; or
- (b) during any Further Device Term for that Device, upon 90 days' written notice to the other party.

15.5 Consequences of termination or expiry of Device Term

Upon termination or expiry of a Device Term taking effect:

- (a) the terms of this agreement and any other Device Term continues and does not terminate (unless separately terminated under clause 15.2 or clause 15.4);
- (b) the Customer must immediately, in respect of the relevant Device the subject of the Device Term:
 - (i) cease using and ensure that each of its Authorised Users ceases using the Telematics Solution with the Device and the Device;
 - (ii) pay to DIT all Solution Fees, Installation Fees, Device Price, Rent, expenses or other sums payable to DIT under this agreement or the Lease Agreement in respect of the Device which have accrued or are payable as at the date of termination or expiry;
 - (iii) return to DIT the Device if the Device was supplied to the Customer under a Lease Agreement;
- (c) DIT ceases to have any obligations under this agreement with respect to the provision of the Telematics Services in respect of the Device; and
- (d) DIT may disable the Customer's access to the Telematics Solution and disable all Authentication Credentials of the Customer and the Authorised Users in respect of the Device.

16. Confidentiality

16.1 Confidentiality obligations

Where a party (**Recipient**) receives Confidential Information from the other party under this agreement or otherwise in connection with the Services, the Recipient must:

- (a) keep the Confidential Information confidential;
- (b) subject to clause 16.2, not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this agreement; and
- (c) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

16.2 Permitted disclosure

Notwithstanding clause 16.1, the Recipient may use or disclose Confidential Information:

- (a) to the extent necessary to comply with its obligations under this agreement;
- (b) to the extent necessary to comply with any law, binding directive of a regulator or a court order;
- (c) to the extent necessary to comply with the listing rules of any securities exchange on which its securities are listed; or
- (d) to the extent necessary to obtain professional advice in relation to matters arising under or in connection with this agreement.

16.3 Promotion and marketing

The Customer agrees that, for the purposes of promoting and marketing DIT and the Telematics Solution, DIT is entitled to notify others of DIT's relationship with the Customer and DIT's provision of the Services to the Customer.

17. Warranties

Subject to clauses 18.1 and 18.2, DIT does not warrant or guarantee that:

- (a) the Devices will be delivered to the Customer or installed in a Vehicle by any particular date;
- (b) the Telematics Solution will be compatible with, or capable of being used on or in connection with, the Customer's computer and communications systems;
- (c) the Telematics Solution will meet the Customer's requirements or that the Customer's access to the Telematics Solution will be uninterrupted, timely, secure or error free;
- (d) the Telematics Solution and any Data will be accurate, reliable or fit for any particular purpose; or
- (e) the Customer will derive any particular benefits from the provision of the Services.

18. Liability

18.1 Australian Consumer Law

If the Customer is a consumer within the meaning in section 3 of the Australian Consumer Law (**Consumer**) and DIT supplies PDH Goods or Services to the Customer, DIT acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**) as they apply to the PDH Goods or Services supplied by DIT and nothing in this agreement should be interpreted as attempting to exclude, restrict or modify the application of any such rights.

18.2 Non PDH Goods or Services

If the Customer is a Consumer and any goods or services supplied by DIT to the Customer are non PDH Goods or Services, DIT's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at DIT's discretion) to:

- (a) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services:
 - (i) the supplying the services again; or
 - (ii) the payment of the cost of having the services supplied again.

18.3 Liability capped

Subject to clauses 18.1, 18.2, 18.4, the maximum aggregate liability of DIT for any loss or claim, however caused or arising, suffered by the Customer in connection with this agreement is limited to the total amount of the Solution Fees paid by the Customer to DIT under this agreement during the 12 month period prior to the Customer first notifying DIT of the relevant loss or claim. The limitation set out in this clause 18.3 is an aggregate limit for all claims or loss, whenever made.

18.4 Consequential Loss

Subject to clauses 18.1 and 18.2, neither party will be liable for any Consequential Loss (however caused) suffered or incurred by the other party in connection with this agreement. This clause applies even if the party knew or ought to have known that the relevant Consequential Loss would be suffered. For the avoidance of doubt, nothing in this clause 18.4 applies to or limits the obligations of the Customer in relation to payment of Solution Fees, Installation Fees, Device Price or Rent.

18.5 Indemnity

The Customer must indemnify and keep DIT indemnified against any loss which arises directly or indirectly out of:

- (a) any failure by the Customer to obtain any consent, authorisation, licence, permit or approval required for DIT to

- provide the Services (including any required under clause 9(b)(i));
- (b) any breach by the Customer or its Authorised Users of any law, statute, regulation, ordinance, code, standard or requirement of any government, governmental or semi-governmental body (including any Privacy Law);
- (c) the Customer or any Authorised User infringing the Intellectual Property of a third party; or
- (d) any wilful misconduct, negligent or unlawful acts of the Customer or any of its related parties or their respective Authorised Users, employees, officers, contractors or representatives,
 - except to the extent the relevant loss arises as a direct result of any breach of this agreement by DIT or any negligent or unlawful act of DIT or any of its personnel.

- (k) This agreement shall be construed in accordance with and be governed by the laws of the State of Victoria and the parties agree to submit themselves to the exclusive jurisdiction of the courts of that State and any courts that may hear appeals from that State, in connection with this agreement.

19. Force Majeure

- (a) If a party is prevented, hindered or delayed from performing its obligations under this agreement by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly.
- (b) If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.
- (c) This clause 19 does not apply to any obligation of the Customer to pay the Solution Fees, Installation Fees, Device Price, Rent or other amounts payable to DIT under this agreement or the Lease Agreement.

20. General provisions

- (a) Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party in the Schedule (as applicable) or such other address for notices a party may notify the other party of in writing from time to time. Notices will be deemed to have been received: by hand upon delivery; by post within six Business Days of sending; and by email one hour after the email is sent (unless the sender knows that email has failed to send).
- (b) Unless specified otherwise in this agreement, this agreement may only be amended or supplemented by an agreement in writing signed by the parties.
- (c) Each party must do all things (including signing or executing documents) reasonably required of it by notice from another party to carry out and give full effect to this agreement and the rights and obligations of the parties under it.
- (d) No provision of this agreement merges on or by virtue of any act, matter or thing undertaken or carried out by any of the parties under this agreement.
- (e) This agreement constitutes the entire agreement between the parties about its subject matter and supersedes all previous communications, representations, understandings or agreements between the parties on the subject matter.
- (f) If any provision of this agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from this agreement without affecting the validity or enforceability of the remaining provisions.
- (g) This agreement may be executed in any number of counterparts each of which shall be deemed an original and all such counterparts together shall be deemed to constitute one and the same instrument.
- (h) Except as expressly provided in this agreement, nothing herein shall constitute or create any partnership, agency or trust between the parties.
- (i) Subject to clause 20(j), neither party may assign any of their rights, benefits or obligations under this agreement without the prior written consent of the other parties.
- (j) The Customer agrees that DIT may subcontract the performance of any of its obligations under this agreement as DIT considers appropriate from time to time and DIT will remain liable to the Customer for the performance of any subcontractors.