



## TERMS OF TRADE

Reviewed by	Bradley Ryan-Agnew Chief Financial Officer
Authorised by	Kyle Page Chief Executive Officer
Publish date	16 December 2024 V1.0

**ERICOM**  
**TERMS OF TRADE**

**1. BACKGROUND AND ACCEPTANCE**

- 1.1 These are the terms and conditions (“**Terms**”) under which we ERICOM PTY. LIMITED ACN 070 942 871 (“Ericom”, “we”, “us”, “our”) will provide goods and services to you.
- 1.2 By signing our Quote (whether physically or electronically) or otherwise requesting our services, you will be deemed to have accepted these Terms which form a legally binding agreement between you and us.
- 1.3 These Terms (including all documents incorporated herein by reference), any Quote, and any specific terms of a purchase order or other document that are either consistent with these Terms or expressly agreed upon by us in writing, constitute the entire contract between us relating to the provision of services.
- 1.4 All our terms and policies, including our Privacy Policy, as published from time to time are incorporated into these Terms.
- 1.5 In the event of a conflict, a Quote issued by us takes precedence over these Terms to the extent of such conflict, and a written contract covering the same subject matter signed by both of us takes precedence over both to the extent of such conflict.

**2. DEFINITIONS AND INTERPRETATION**

- 2.1 In these Terms:

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Change in Control** means a change in more than 50% of the shareholding or underlying control or the composition of the board of directors of a person, or the sale of all or substantially all of the assets of a person.

**Claim** means a claim, action, demand, damage, loss, liability, cost, charge, expense (including legal costs on a full indemnity basis), outgoing, fine or payment.

**Confidential Information** means information of a confidential nature including information about a person’s business, operations, strategy, formulas, inventions, know-how, technique, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Deliverables** means all items specified as a deliverable or a supplied material in a Quote and all Products supplied by, or on behalf of, us in the course of, or relating to, the Services. For the avoidance of doubt, Deliverables include, without limitation, technology solutions, cabling, software products and programming and hardware.

**Delivery Date** means any date and time for delivery of the Services as stated in a Quote or as otherwise advised by us from time to time.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Insolvency Event** means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within 21 days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above.

**Intellectual Property Rights** means all present and future rights in relation to copyright, media, photographs, videos, fonts, trade marks, designs, formulas, know-how, strategy, patents, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of these Terms, and whether in Australia or otherwise.

**Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

**Other Expenses** means other fees, costs, expenses and charges, including third-party subscription costs, travel costs, telecommunications expenses, currency exchange fees and charges, postage, courier fees, photocopying fees and company and other search fees incurred by us in providing the Services, in addition to the Price.

**Personnel** means a party's officers, employees, agents, consultants, contractors and subcontractors.

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

**PPSR** means the Personal Property Securities Register, which records security interests registered in accordance with the PPSA.

**Pre-Existing Materials** means all Intellectual Property Rights, things, materials, documents, information and items developed by or on behalf of you or us, respectively, independently of the Services.

**Price** means the amounts payable by you under these Terms for the Services, calculated in accordance with the relevant Quote.

**Privacy Laws** means the *Privacy Act 1988* (Cth) including the Australian Privacy Principles set out in the Act and any code approved by the Privacy Commissioner under the *Privacy Act 1988* (Cth) which binds us or you and any laws giving rise to an actionable right of privacy.

**Products** means any products, materials, hardware or items supplied by us to you in the course of providing the Services.

**Quote** means our proposal(s) and or quote(s) issued to you with respect to the provision of goods and services by us under these Terms which are accepted by you.

**Services** means the activities and services described in a Quote and includes the Deliverables.

**Tax Invoice** has the meaning given in the GST Law.

**Variation Notice** has the meaning given in clause 10.1.

**Variation Quotation** has the meaning given in clause 10.2.

2.2 In these Terms, the following rules of interpretation apply unless the contrary intention appears:

- 2.2.1 headings are for convenience only and do not affect the interpretation of these Terms;
- 2.2.2 the singular includes the plural and vice versa;
- 2.2.3 words that are gender neutral or gender specific include each gender;
- 2.2.4 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 2.2.5 "includes" means without limitation;
- 2.2.6 a reference to:
  - (a) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (b) a party includes its successors and permitted assigns;
  - (c) a document includes all amendments or supplements to that document;
  - (d) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, these Terms;
  - (e) these Terms include all schedules and attachments to it;
  - (f) an agreement other than these Terms include an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (g) a monetary amount is in Australian dollars;
- 2.2.7 an agreement on the part of two or more persons binds them jointly and severally;
- 2.2.8 when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- 2.2.9 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these Terms or any part of it.
- 2.2.10 Words and phrases used in clauses 11 (Retention of Title and Risk), 12 (PPSR) and 13 (Proceeds and Right of Entry) that have defined meanings in the PPSA have the same meaning as in the PPSA, unless the context indicates otherwise.

### **3. PROVISION OF SERVICES**

- 3.1 We will provide you with the Services, on a non-exclusive basis, by the Delivery Date or at such times as may be agreed between you and us.
- 3.2 You will make available to us all reasonable assistance and documentation required for us to provide the Services in accordance with these Terms.
- 3.3 We may from time to time agree for us to provide services in addition to the Services described in a Quote (**Additional Services**). You shall pay us fees for the Additional Services in addition to the Price calculated based on the rates notified by us from time to time.

### **4. TELSTRA BUNDLE SALES**

- 4.1 A Telstra Business System (**TBS**) deal can either be a new system installation or may be a "MAC" (Moves, Adds & Changes). Such requests all have an associated Telstra Business Systems Agreement. This Agreement must be signed and approved by TBS before the application can be processed and or scheduled by Ericom.
- 4.2 The TBS Customer Acceptance Certificate (**TBS CAC**) form is an acknowledgment of the delivery and the installation and configuration of the hardware and/or solution. The TBS CAC is to be completed and signed by you after the installation and configuration of the hardware/solution. We may request a TBS CAC at the time of the system being configured

and connected to your network and/or Telstra Business Services making the system functional. A list of outstanding items that may be required to be completed will be identified by the Ericom staff member and where appropriate by you.

- 4.3 Ericom will apply for and manage any carriage services that you have agreed to implement. Ericom will act as an agent for Telstra and will submit on your behalf any properly signed requests for such services. Ericom do not accept any responsibility due to the delivery and or performance of any products or services supplied by Telstra.

## **5. PERSONNEL**

Our Personnel are employees or contractors of Ericom and are not your employees or contractors.

## **6. OTHER EXPENSES**

- 6.1 In providing the Services, we may incur Other Expenses.
- 6.2 We will charge you for any Other Expenses incurred by us for and on behalf of you. You must pay for the Other Expenses, including any GST, incurred by us on your behalf.
- 6.3 Upon our written request, you will provide us with payment in advance of us incurring an Other Expense on your behalf.
- 6.4 All managed services agreements between you and us that are on a monthly payment schedule and not paid via direct deposit will incur an administration fee of 5%.
- 6.5 If Visa or Mastercard credit cards are used to pay monthly accounts, no merchant fee will apply. If AMEX credit cards are used to pay monthly accounts, a 3% merchant fee will apply per transaction. This clause remains subject to change at our absolute discretion.

## **7. INVOICING AND PAYMENT TERMS**

- 7.1 Unless we otherwise agree, you must provide us with a completed and signed credit application form (in the form supplied by us) before we commence providing the Services. We may require your credit application form to be completed electronically and lodged via a third party supplier portal. We reserve the right to reject a request for Services, or otherwise suspend or cease providing Services, until such time as you have submitted a credit application form which is approved by us.
- 7.2 We may invoice you for the Price and Other Expenses as incurred from time to time.
- 7.3 The Price shall be reviewed from time to time in accordance with the review mechanism contained in the relevant Quote. If the Quote does not contain any review mechanism for all or part of the Price, on each anniversary of the date the Services commenced, the Price shall be subject to increase equivalent to either the Consumer Price Index (All Groups – Sydney) published for the preceding quarter or a fixed 3%, whichever is greater.
- 7.4 Subject to clause 8, unless otherwise specified in a Quote or on the relevant invoice you will pay any invoice issued by us within 7 days from the date of that invoice.
- 7.5 The terms for payment of the Price shall be as specified in a Quote. In the event a Quote does not contain relevant payment terms, the payment terms contained in Schedule 1 to these Terms shall apply.
- 7.6 If you are late in making payment, without affecting our other rights, we may suspend delivery or cancel the provision of Services and charge you:
- 7.6.1 with respect to each outstanding invoice, a late-payment administration fee of \$150 plus GST;

- 7.6.2 interest on the amounts owing from the due date until the date paid, at the rate of 1.5% per month or, if less, the maximum amount allowed by law. Interest under this clause will be calculated daily and compounded to the amount owing monthly in arrears until paid in full; and/or
- 7.6.3 to the fullest extent permitted by law, any expenses, costs or disbursements incurred by Ericom in recovering any outstanding amounts including fees of a debt-collecting agency and/or solicitor's fees.

## **8. DISPUTED INVOICES**

- 8.1 We may elect at our absolute discretion to withhold performing any further Services in the event of a disputed invoice until such time as the disputed invoice is resolved.
- 8.2 You must:
  - 8.2.1 pay any non-disputed amounts in accordance with this clause 8; and
  - 8.2.2 promptly pay any disputed amounts that are subsequently found to be correctly payable.

## **9. ACCEPTANCE AND DEFECTIVE PRODUCTS**

- 9.1 You are deemed to have accepted the Products supplied by us if you fail to give a written notice of rejection in accordance with clause 9.2.
- 9.2 You:
  - 9.2.1 subject to clauses 9.2.2, 9.3, and 9.7, may reject Products supplied by us to you which are materially defective; and
  - 9.2.2 must give Ericom written notice of rejection (including detailed reasons for its rejection) within three (3) Business Days of delivery of the relevant Products.
- 9.3 We are not liable for any Products which you deem to be defective, where:
  - 9.3.1 you make any further use of those Products after giving notice in accordance with clause 9.2;
  - 9.3.2 the defect arises because you failed to follow our oral or written instructions for the storage, transportation, commissioning, installation, use or maintenance of the Products or best industry practice;
  - 9.3.3 the defect arises as a result of us providing the Products in accordance with any instruction, drawing, design or specification supplied by you;
  - 9.3.4 you alter or repair the Products without the written consent of Ericom;
  - 9.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 9.3.6 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.4 If you reject Products under clause 9.2 then we may, at our option:
  - 9.4.1 replace or re-supply the rejected Products or supply equivalent products;
  - 9.4.2 repair the rejected Products; or
  - 9.4.3 provide a credit note to you in the amount of the price paid for the rejected Products.
- 9.5 This clause 9 applies to any repaired or replacement Services supplied by us.
- 9.6 Subject to clause 9.7 and notwithstanding clause 9.3, if you give notice requesting to return a defective Product where the defect arises as a result of us providing the Products in

accordance with any instruction, drawing, design or specification supplied by you, then we may consent to such return and issue you with a credit note in the amount of the Price paid for the rejected Products provided that you pay to us a restocking fee equal to 20% of the gross Price of the returned Product. We will not unreasonably withhold providing approval for a return under this clause 9.6, except where the defective Product is a special order or a special build, in which case we may give or withhold approval at our absolute discretion.

- 9.7 The following provisions apply with respect to any defective Products returned to us under this clause 9:
- 9.7.1 you are responsible for all costs and risk in connection with the return of such Products, including risk of loss or damage in transit, insurance risk and costs of transportation;
  - 9.7.2 to the extent that the defective Products include any licenced third party hardware or software, we may accept or reject (at our discretion) a return of those Products or the relevant licensed hardware or software having regard to the terms and conditions upon which we licence that third party hardware or software;
  - 9.7.3 to the extent permitted by law, any returned Products must be unused and in original packaging and condition, not damaged, returned to us within 30 days of delivery to you and in a saleable condition;
  - 9.7.4 if we decide to provide you with a replacement Product, or to repair a returned defective Product, then you will be responsible for all costs and risk in connection with the delivery of the replacement or repaired Products to your nominated location; and
  - 9.7.5 unless we otherwise agree in writing, any Products which are a special order or special build are not returnable irrespective of defect.

## 10. VARIATIONS

- 10.1 You may by written notice to us request us to vary the scope of the Services to be supplied under these Terms, but only to the extent of a request to perform additional services or Products or increase the frequency and/or duration of performance of all or any part of the Services (**Variation Notice**).
- 10.2 Within 10 Business Days of receiving a Variation Notice, we will provide to you a written quotation (**Variation Quotation**) which details:
- 10.2.1 the variation as requested by the Variation Notice;
  - 10.2.2 a variation to the Price and payment terms; and
  - 10.2.3 all relevant specifications, time frames and operational requirements relating to the varied Services additional to but not inconsistent with those in the Variation Notice.
- 10.3 You may by written notice to us:
- 10.3.1 accept the Variation Quotation within 5 Business Days of it being sent; or
  - 10.3.2 reject the Variation Quotation within 5 Business Days of it being sent if that Variation Quotation has not already been accepted.
- 10.4 If you fail to accept or reject the Variation Quotation within 5 Business Days of it being sent by us, the Variation Quotation will be deemed to be accepted by you.
- 10.5 For the avoidance of doubt, you may request to vary the Services so as to:
- 10.5.1 omit any part of the Services; or
  - 10.5.2 decrease the frequency and/or duration of performance of all or any part of the

Services,

however, we may accept or reject such a request at any time at our absolute discretion and clauses 10.1 to 10.4 will not apply to such a request. A failure by us to respond to such a request under this clause 10.5 within 10 Business Days of the request being made will be deemed a rejection of such a request.

## **11. RETENTION OF TITLE AND RISK**

11.1 The risk of loss of, or damage to, the Deliverables passes to you on the delivery of possession of such Deliverables to you (or your nominee) at your nominated location.

11.2 Ericom retains legal and equitable title to the Deliverables, and such title in the Deliverables does not pass to you until, we have received payment in full (in cleared funds) for all amounts that you owe us under these Terms and in respect of the Services provided.

## **12. PPSR**

12.1 These Terms constitute a security agreement for the purposes of the PPSA. You acknowledge that you have granted Ericom:

12.1.1 a security interest in the Deliverables and their proceeds which is a purchase money security interest to the extent that it secures payment of all or part of the purchase price for the particular Deliverables; and

12.1.2 as security for any amounts due to Ericom under these Terms, a charge of all your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property to Ericom and consent unconditionally to Ericom lodging a caveat or caveats noting its interest in your real property.

12.2 You consent to Ericom perfecting any security interest arising in connection with these Terms by registering a financing statement on the PPSR and any other applicable security registers in any manner it considers appropriate. You agree to do anything we reasonably asks to ensure that the security interest is enforceable, perfected and otherwise effective and has priority over all other security interests.

12.3 You agree to pay or reimburse Ericom for any fees or charges for the PPSR or other registrations contemplated by this clause 12.

12.4 We agree to discharge the security interest in the Deliverables registered on the PPSR within a reasonable period after title passes to you in accordance with clause 11.2.

12.5 Until such time that title in Deliverables passes to you in accordance with clause 11.2, you must not do any of the following in relation to such Deliverables (except where expressly permitted by these Terms):

12.5.1 create or allow any interest in, or dispose or part with possession of, the Deliverables;

12.5.2 allow the Deliverables to be taken outside of Australia;

12.5.3 allow the Deliverables to become an accession to or commingled with any other property not supplied by us; or

12.5.4 grant any security interest in respect of accounts owed to you in relation to the Products,

without our prior written consent.

12.6 You waive your right to receive any notice (including notice of a verification statement) that is required by the PPSA unless the notice is required by the PPSA and cannot be excluded.

12.7 You agree not to exercise your rights to make any request of Ericom under section 275 of the



PPSA. However, this does not limit your rights to request information other than under section 275 of the PPSA. Neither your nor Ericom will disclose any information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies.

12.8 To the extent permitted by law, you and Ericom contract out of and you waive your rights under the following provisions of the PPSA:

12.8.1 s 95 (notice of removal of accession), to the extent that it requires us to give a notice to you;

12.8.2 s 96 (when a person with an interest in the whole may retain an accession);

12.8.3 s 121(4) (enforcement of liquid assets - notice to grantor);

12.8.4 s 125 (obligation to dispose of or retain collateral);

12.8.5 s 130 (notice of disposal of collateral), to the extent that it requires us to give a notice to you;

12.8.6 s 132(3)(d) (contents of statement of account after disposal);

12.8.7 s 132(4) (statement of account if no disposal);

12.8.8 s 135 (notice of retention of collateral);

12.8.9 s 142 (redemption of collateral);

12.8.10 s 143 (reinstatement of security agreement); and

12.8.11 for the purposes of section 115(7), sections 132 (secured party to give statement of account) and 137(3) (persons entitled to notice may object to proposal).

12.9 You must notify us at least 10 Business Days before you: (a) change your name; (b) change your place of registration or incorporation; or (c) change or apply for an ACN, ABN, ARBN or ARSN under which an interest in any of the Deliverables is or will be held.

### 13. PROCEEDS AND RIGHT OF ENTRY

13.1 If you sell or dispose of any Deliverables, Ericom's security interest in those Deliverables arising under these Terms continues in any proceeds of sale. You must pay all monetary proceeds, up to the amount owed, into a separate account until they are paid to us, and must not mix them with any other amount or use them to pay a debt.

13.2 In the event that you fail to pay for the Services in accordance with these Terms or you are otherwise in breach of these Terms, Ericom may exercise any rights it has to enforce its security interest in the Deliverables.

13.3 You:

13.3.1 grant us and our officers, employees and agents an irrevocable licence to enter any land, premises, computer infrastructure, data base (whether physical or cloud based) for the purpose of inspecting, seizing or otherwise enforcing our rights in respect of the Deliverables under these Terms or ensuring your compliance with clauses 11, 12 and 13; and

13.3.2 indemnify us for any Claims for damage to property or personal injury as a result of exercising those rights.

13.4 If we seize or retake possession of any Deliverables, we may deal with them as we see fit.

### 14. GST

14.1 In this clause 14 terms used in this clause which are not defined in these Terms, but which are defined in the GST Law, have the meanings given in the GST Law.

- 14.2 Unless otherwise stated in these Terms, amounts payable, and consideration to be provided, under any provision of these Terms exclude GST.
- 14.3 If GST is payable on a supply made in connection with these Terms, the recipient must pay the person making the supply (**Supplier**) an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply. The Supplier must provide a Tax Invoice to the recipient.
- 14.4 If an adjustment event arises in connection with a supply made in connection with these Terms:
  - 14.4.1 the Supplier must recalculate the GST payable to reflect the adjustment event;
  - 14.4.2 the Supplier must give the recipient an adjustment note as soon as reasonably practicable after the Supplier becomes aware of the adjustment event; and
  - 14.4.3 the adjustment amount must be paid without delay either by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- 14.5 Where a party (first party) must pay to another party (other party) an outgoing of the other party, the amount payable is the sum of:
  - 14.5.1 the amount of the outgoing less any input tax credit in respect of it to which the other party, or its GST group representative member, is entitled; and
  - 14.5.2 if the amount payable is subject to GST, an amount equal to that GST.

14.6 The provisions of this clause 14 do not merge on Completion.

## 15. INTELLECTUAL PROPERTY

- 15.1 No change in ownership of the Intellectual Property Rights in any of your or Ericom's respective Pre-Existing Materials is effected by these Terms or the provision of the Services.
- 15.2 Subject to clause 15.1 and with the exception of our Pre-Existing Materials, the right, title and interest in any new Intellectual Property Rights created by us which subsists in any Deliverables delivered to you under this Agreement (**New IP**) shall transfer to you upon full payment of the Price and Other Expenses in respect of those Deliverables.
- 15.3 To the extent we retain ownership of any New IP, we grant you a personal, non-exclusive, non-transferrable and revocable licence to use the New IP for the purpose of receiving the benefit of the Services.
- 15.4 You grant to us a personal, royalty free, non-exclusive, non-transferrable licence to use your Pre-Existing Materials only to the extent required to provide the Services to you.
- 15.5 All subscriptions and licences for third party Intellectual Property Rights, services, plug ins, software and/or media (**Third Party IP**) provided through the delivery of the Services are held by us (unless otherwise notified or stated in a Quote). You shall not reuse or distribute the benefit of such Third Party IP unless approved by us in writing.
- 15.6 Unless you give us written notice to the contrary, you hereby authorise and consent to us displaying your trading name and/or trade marks and logo on our marketing materials, website and social media platforms for the purposes of marketing our business.

## 16. CONFIDENTIALITY

- 16.1 You must keep confidential, and not disclose, any of our Confidential Information except:
  - 16.1.1 as permitted under these Terms;
  - 16.1.2 with our prior written consent;

- 16.1.3 to your officers, professional advisers, auditors, employees, contractors, sub-contractors and insurers, but only in the event those persons are subject to equivalent obligations of confidentiality with respect to such disclosed Confidential Information; or
  - 16.1.4 where you are compelled to do so by Law, provided that you give us written notice prior to disclosure.
- 16.2 You must only use our Confidential Information for the purpose for which it was disclosed in connection with these Terms.
- 16.3 You must:
- 16.3.1 maintain effective security measures to protect all Confidential Information in your possession or control from unauthorised access, use, copying or disclosure;
  - 16.3.2 notify us immediately in writing if you become aware of any anticipated, suspected or actual breach of this clause 13 and take all reasonable steps required to prevent or stop that breach, at your expense; and
  - 16.3.3 reasonably assist us in connection with any action or investigation by us regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by you.
- 16.4 Upon request from us, you must procure that your Personnel that are in direct or indirect connection with the performance of these Terms to execute a confidentiality undertaking, agreement or deed in the form acceptable to us.
- 17. PRIVACY**
- 17.1 You must, and must ensure that your Personnel, comply with all Privacy Laws and not do or omit to do anything that you know, or have reasonable grounds to suspect or believe, would cause us or our Personnel to breach any Privacy Law.
- 17.2 If and to the extent that you become aware of a breach of the Privacy Law by you or us in connection with the performance of the Terms, you will promptly and without undue delay notify us of such breach and its reasons for believing such breach has occurred.
- 18. INDEMNITY**
- 18.1 You indemnify us and our officers, employees and agents (**Indemnified Parties**) from and against any Claim which any of the Indemnified Parties pays, suffers, incurs or is liable for arising out of or in connection with:
- 18.1.1 any breach of these Terms by you;
  - 18.1.2 loss of, or damage to, any property or death of or injury to a person to the extent caused or contributed to by any act or omission of you or your Personnel;
  - 18.1.3 any breach of Law by you or your Personnel;
  - 18.1.4 any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights); and
  - 18.1.5 any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation by you or your Personnel.
- 19. DISPUTE RESOLUTION**
- 19.1 Neither you or Ericom will commence court proceedings or action against the other under or in connection with these Terms (**Dispute**) (other than where urgent interlocutory relief is required) unless you or we have first attempted to resolve the Dispute in accordance with

this clause 19.

19.2 You and we will attempt to resolve any Dispute as follows:

19.2.1 either you or we may notify the other in writing of the occurrence of a Dispute and you and we must meet within 5 Business Days or such other time as agreed to discuss and attempt to resolve the Dispute;

19.2.2 failing resolution of the Dispute within 10 Business Days after the first meeting between you and us in accordance with 19.2.1, you and us may agree to refer the Dispute for mediation to be conducted in accordance with the Australian Commercial Disputes Centre (**ACDC**) Mediation Guidelines and with a mediator as agreed by you and us or, failing agreement, as appointed by the CEO of the ACDC. If you and we do not agree to do so, either party may commence legal proceedings.

19.3 We may at our absolute discretion elect to withhold performing any further Services in the event of a Dispute. Nothing in this clause 19 will prevent you from complying with your obligation to pay any outstanding invoiced Price for the Services.

## **20. TERMINATION**

20.1 We may terminate our agreement with your under these Terms without cause by giving you at least 30 days prior written notice.

20.2 We may terminate these Terms immediately upon written notice to you, if:

20.2.1 you breach any obligation under these Terms which are capable of remedy, and do not remedy that breach within 10 Business Days of receipt of a notice from us specifying the breach and requiring it to be remedied;

20.2.2 you commit a breach of these Terms which are incapable of remedy;

20.2.3 you do anything that materially damages or is likely to materially damage our brand or reputation;

20.2.4 you or any of your Personnel commit any act of fraud or dishonesty in relation to these Terms;

20.2.5 an Insolvency Event occurs in relation to you; or

20.2.6 a Change in Control occurs in relation to you without our prior written consent.

20.3 You may terminate your agreement with us under these Terms immediately upon written notice to us if:

20.3.1 we commit a material breach of an obligation of these Terms and do not remedy that breach within 10 Business Days of receipt of a notice from you specifying the breach and requiring the breach to be remedied; or

20.3.2 an Insolvency Event occurs in relation to us.

## **21. CONSEQUENCES OF TERMINATION**

21.1 As soon as practicable after expiry or termination of these Terms, you must:

21.1.1 return to us all equipment, records, documents and materials provided by us for the purposes of these Terms; and

21.1.2 return to us all of our Confidential Information in your possession or control.

21.2 If these Terms are terminated by either you or Ericom under clause 20, you must on such date of termination pay to us all outstanding Price due and payable as at the date of termination.

21.3 Clauses 7, 11, 15, 16, 17, 18, 19, 21, 25 and 26 continue after termination or expiry of these

Terms.

## **22. SUBCONTRACTING**

22.1 We may subcontract any of our rights or obligations under these Terms without giving notice to you.

## **23. GUARANTEE**

23.1 In the event that you are not a natural person (e.g. a public company, a private incorporated company or an unincorporated association) then by acceptance of these Terms you acknowledge that Ericom requires the provision of a personal guarantee by a director or other duly authorised representative (**Guarantor**) in the capacity of a personal guarantor of your obligations under these Terms.

23.2 The guarantee to be provided by the Guarantor will be a personal guarantee of all your obligations under these Terms including in particular the payment of all amounts as invoiced to you and all debts which are or may become due and payable by you.

23.3 You must procure that each Guarantor executes a Deed of Guarantee upon Ericom's request and in the form supplied by Ericom.

## **24. NOTICES**

24.1 Any notice given in connection with these Terms must be in writing and must be addressed to you or us (respectively) and either:

24.1.1 hand delivered to, or sent by post to, the party's address as described in a Quote, the registered office, principal place of business or any other address the party notifies for the service of notices; or

24.1.2 sent by email to the email address of each respective contact as described in a Quote or any email address the party notifies for the service of notices.

24.2 A notice is taken to have been given:

24.2.1 in the case of being hand delivered, on the date on which it is delivered;

24.2.2 in the case of being sent by post, on the third (seventh if sent to an address in another country) day after the date of posting; and

24.2.3 in the case of delivery by email, at the time sent unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

## **25. DISCLAIMER OF WARRANTY**

25.1 To the extent permitted by Law, we provide the Services and Deliverables on an "as is" basis. We do not make any representation or warranty as to the accuracy, completeness, currency or reliability of the Services or the Deliverables. Because some jurisdictions do not allow the exclusion of implied warranties, the above exclusion of implied warranties may not apply to you.

## **26. TRUSTEE**

If you are entering into these Terms as trustee of a trust (**Trust**), you acknowledge and warrant in respect of yourself that: (a) you have power under the relevant Trust deed to enter into and perform its obligations under these Terms; and (b) the Trust was validly created and is in existence and you were validly appointed as and are the sole trustee of the Trust; and (c) you have an unrestricted right of indemnity out of the Trust's assets.

## **27. GENERAL**

## 27.1 Assignment

27.1.1 You may not assign or novate any of your rights or obligations under these Terms without our prior written consent.

27.1.2 To avoid doubt, a Change in Control with respect to you without our prior written consent will amount to an assignment of your rights in breach of this clause 27.1.

## 27.2 Relationship

Nothing in these Terms give rise to any relationship of agency, partnership, employment or otherwise between you and us.

## 27.3 Entire agreement

These Terms and any Quote constitute the entire agreement between you and us in connection with their respective subject matter and supersedes all previous agreements or understandings between you and us in connection with the relevant subject matter.

## 27.4 Further assurance

Each of you and us must promptly do whatever the other reasonably requires of it to give effect to these Terms and to perform its obligations under these Terms.

## 27.5 Inconsistency

In the event of any inconsistency between:

27.5.1 a Quote;

27.5.2 these Terms;

27.5.3 any attachments,

the document listed first in this clause 27.5 will prevail to the extent of the inconsistency.

## 27.6 Waiver

No waiver of a right or remedy under these Terms are effective unless it is in writing and signed by the party granting it.

## 27.7 Variation

No variation of these Terms are effective unless made in writing and signed by each of you and us.

## 27.8 Governing law

These Terms are governed by the laws of New South Wales and each party submits to the exclusive jurisdiction of the courts of New South Wales.

## 27.9 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document. These Terms may be signed and / or accepted electronically.

## SCHEDULE 1 – PAYMENT TERMS

1. During the course of providing the Services we may require several invoicing stages depending on size and complexity of the Services being provided.
2. At each invoicing stage, a Customer Acceptance Certificate (**CAC**) will be created which you will be required to sign. A CAC is an acceptance of the Services completed by us and may also identify outstanding items yet to be completed.
3. For the avoidance of doubt, to the extent of any conflict or inconsistency between this Schedule and clause 9 of the Terms with respect to defective Products, clause 9 shall prevail.
4. You and Ericom may agree in writing to implement any one of the following payment terms with respect to the provision of Services:

### **Option A**

- (a) The payment terms in this Option A may only apply to mobility products and computing hardware supplied by us.
- (b) 100% of the quoted price invoiced on order with payment due in full prior to delivery or start of installation.
- (c) For special order or special build Products, the payment will need to be paid prior to order of the specified hardware and or software.
- (d) This option is typically used on the purchase of hardware that is for delivery only used when creating sales orders and no professional Services are required.

### **Option B**

- (a) 60% deposit on order as a deposit for the total project price that will be invoiced by Ericom. Initial payment must be received by Ericom prior to hardware order and provision of professional services.
- (b) 30% on delivery and/or installation of hardware. An Ericom CAC will need to be signed acknowledging hardware and licencing have been supplied as per Quote and that you accept that a progress invoice will be raised for 30% of the total amount as per invoice terms. The CAC will fully detail all outstanding project tasks Ericom has to complete before the final 10% invoice is raised upon completion. Ericom reserve the right to raise the 30% progress invoice 14 days after parts are delivered to your premises if you cause delays on installation and deployment for any reason.
- (c) 10% final acceptance invoice will be raised once the final CAC form is completed and you accept that Ericom have completed the Services in relation to the project/solution.

### **Option C**

If a finance option is selected all finance documents must be signed off and provided to Ericom along with an approval letter and/or purchase order from the finance company prior the ordering of and services or hardware.