

SERVICE TERMS

SERVICE OPTION: OPTUS TELEMATICS SERVICES (POWERED BY WORKM8)

This Service Option forms part of the Optus IoT Services.

The Optus Telematics Service Description comprises the following Parts:

- Part 1: Service Family Terms (applicable to all Optus IoT Services); and
- Part 2: The Service Terms.

The Service Terms are to be read in conjunction with both the General Terms and the Service Family Terms.

1. DESCRIPTION OF THE SERVICE OPTION

1.1 The Optus Telematics Service (the “**Service**”) assists customers in the tracking of vehicles for the purpose of driver safety and asset management.

1.2 The Service consists of the following components:

- (a) the on-supply of Third Party Products and/or services:
 - (i) right of use the Telematics Device for the term;
 - (ii) right of access to the Cloud-based Software Platform for the management of the relevant Telematics Device; and
 - (iii) professional services, such as installation as specified in the statement of work.

2. SERVICE PRE-REQUISITES

2.1 Access connection type

2.2 To use this service, you must establish and maintain the Optus machine to machine (M2M) service. If an Optus SIM Card is used:

- (a) the Optus SIM Card will allow you to send and receive an SMS to and from, any mobile network service provider that holds an inter-carrier agreement with Optus, inclusive of interconnection arrangements for SMS traffic.
- (b) where you have a voice and SMS compatible Telematics Device and where requested by you, Optus will provision the Service to enable your Optus SIM Card to send and receive voice calls, from your Telematics Device to any mobile network service provider that holds an inter-carrier agreement with Optus, inclusive of interconnection arrangements for voice traffic. Please note that if your device does

not support VoLTE, your voice service will be impacted and will no longer work when the Optus 3G network is switched off from September 2024.

- (c) where you have a VoLTE compatible device and where requested by you, Optus will provision the Service to enable your Optus SIM Card to send and receive VoLTE calls to and from, any mobile network service provider that holds an inter-carrier agreement with Optus, inclusive of interconnection arrangements for VoLTE traffic.
- (d) where requested, Optus will provision your Service to allow your Telematics Device to send SMS messages from the Optus mobile network or to receive SMS messages from, any mobile network service provider that holds an inter-carrier agreement with Optus.

2.3 Optus SIM Cards are available in the following formats and types:

- (a) Triple Punch SIM Card (2FF/3FF/4FF) with temperature range of -40 to 85 degrees Celsius.
- (b) 2FF form factor (Standard) with temperature range of -40 to 85 degrees Celsius.
- (c) 3FF form factor (Micro) with temperatures range of -40 to 85 degrees Celsius.
- (d) 4FF form factor (Nano) with temperature range of -40 to 85 degrees Celsius.
- (e) 2FF form factor (Standard) with temperature range of -40 to 105 degrees Celsius.
- (f) 3FF form factor (Micro) with temperature range of -40 to 105 degrees Celsius.
- (g) 4FF form factor (Nano) with temperatures range of -40 to 105 degrees Celsius.
- (h) MFF2 form factor with temperature range of -40 to 105 degrees Celsius.

2.4 Optus will, from time to time, determine which format and type of Optus SIM Card that is required for the Service.

3. SERVICE FEATURES

3.1 The Cloud- based Software Platform includes these functions:

- (a) Asset tracking; and
- (b) Data analytics and reporting

3.2 Satellite phone services for remote location(s), if applicable. This service feature may have its own terms and conditions which will be provided under the Statement of Work.

4. TELEMATICS DEVICE

4.1 The Telematics Device will be delivered to you by the Third Party Service Provider at the Site stated in the statement of work.

4.2 Risk in the Telematics Device will pass to you on delivery.

- 4.3 You will own the Telematics Device at the end of the Committed Term.
- 4.4 The Telematics Device has been pre-configured and the Optus SIM Card embedded for self-installation. You must comply with reasonable directions of the Third Party Service Provider's installation instructions. If you choose to engage professional services for installation of the Telematics Device this will be in your statement of work.

5. SERVICE MANAGEMENT CLARIFICATION

- 5.1 The Service Management that is specified in the IOT Service Family Terms do not apply to the Optus Telematics Service which includes the Telematics Device.

6. TELEMATICS DEVICE SUPPORT AND MAINTENANCE

- 6.1 Support and maintenance for the Telematics Device is provided directly by the Third Party Service Provider.
- 6.2 The Third Party Service Provider's helpdesk is contactable by 02 8598 8596 (Monday to Friday 9am – 5pm AEST) or by email help@workm8.io (24/7). Support tickets will be raised and the ticket is tracked.

7. SERVICE LEVEL AGREEMENT (SLA)

7.1 Responsibility Matrix

- (a) The helpdesk will provide support tickets received from customer relating to supplied hardware (such as the Telematics Device) and / or software and will administer and troubleshoot issues. Helpdesk will track problems and provide workaround when appropriate.
- (b) Where there is failure in the Telematics Device, the helpdesk will provide an acknowledgement within 4 hours and support commences within 4 hours of that acknowledgement. The maximum resolution time is 2 weeks.

- 7.2 The following Third Party Service Provider response times apply.

Category	Criteria	Target Response Times (business hours)	Target Update Frequency	Target Temporary Resolution Timeframe	Target Resolution (business days)
Critical / Severity 1	Service unavailable	1	30 mins	4 hours	3
Major / Severity 2	Service impacted	4	1 hour	4 hours	7
Minor / Severity 3	Service partially impacted, non-critical	8	3 business days	24 hours	15
Cosmetic / Severity 4	Minor technical issue/inquiry	12	7 business days	5 business days	30

7.3 Classification of Category

(a) Critical / Severity 1

Critical Production issue that severely impacts the use of the Cloud-based Software Platform. The situation halts the customer's business operations where there is no procedural workarounds.

- Service is down or unavailable
- Data corruption or lost and must be restored from backup
- Critical documented features / functions are not available

(b) Major / Severity 2

Major functionality is impacted, or significant performance degradation is experienced. The situation is causing a high impact to portions of the customer's business operations and no reasonable workaround exists.

- Service is operational but highly degraded performance to the point of major impact on usage
- Important features of the Software as a Service offering are unavailable with no acceptable workaround; however, operations can continue in a restricted manner.

(c) Minor / Severity 3

There is a partial, non-critical loss of use of the service with a medium-to-low impact on customer's business, but customer's business continues to function. Short-term workaround is available, but not scalable.

(d) Cosmetic / Severity 4

Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Acceptable workaround available.

The classification of categories may be altered within the lifecycle of the issue when mutually agreed between the customer and the Third Party Service Provider. Service Level reporting will be based on the final agreed classification.

8. TELEMATICS DEVICE SERVICE AVAILABILITY

- 8.1 Optus and Third Party Service Provider do not provide any warranty or guarantee in relation to the quality of the electronic communications network, including, but not limited to, availability, signal quality, faults and interruptions.
- 8.2 You acknowledge that the functionality of the software is dependant, amongst other things, on the quality of any Wi-Fi, Bluetooth or other connection to the internet used by you. Optus and Third Party Service Provider do not warrant that the software will always function in circumstances where the internet connection is in any way limited or not functioning.
- 8.3 The Telematics Device relies on GPS (Global Positioning System) for location information. You acknowledge that the functionality of the software is dependant, amongst other things, on the quality of any GPS data received by the Telematics Device and transmitted to the software. Optus and Third Party Service Provider do not warrant that the software will always function in circumstances where the GPS data is in any way limited or not functioning.

9. CHARGES

- 9.1 You may purchase the Service for a Committed Term of 12, 24 or 36 months as selected in the Application and / or statement of work.
- 9.2 A Cancellation Fee may apply if you cancel the Service during the Committed Term. Any Cancellation Fee calculation will be set out in the Application or statement of work.
- 9.3 The charges for the Service will be detailed in the Application and / or statement of work. The charges will consist of:
- (a) once off charges, including:
 - (i) Professional services, where applicable
 - (b) monthly recurring charges to use of the Cloud-based Software Platform; and
 - (c) any other charges for the Service are set out in the Application or statement of work.
- 9.4 Where the Service is provided in phases or agreed milestones, the charges for the Service will commence on the date of commencement of the first phase or milestone. The Service Start Date is deemed to be the date on which the first Telematics Device is installed and deemed working.
- 9.5 Optus reserves the right to increase the monthly fees as stated in your Application, statement of work or other agreement for the Service if a third party provider(s) to Optus increases their charges for the service to Optus. Any increase would be commensurate with the third party charge increase. Optus will provide to you at least 60 days' prior notice.

10. CUSTOMER OBLIGATIONS – USE OF THE SERVICES

- 10.1 You will:
- (a) comply with all relevant legislation and the reasonable directions of Optus and its Third Party Service Provider, relating to the use of the Services;
 - (b) not use the Services for any improper, immoral, fraudulent or unlawful purposes or for the sending of any communication which is of an offensive, threatening, defamatory, abusive, indecent, obscene or menacing nature;
 - (c) not cause any nuisance to any third party by any use or misuse of the Services;
 - (d) not act or fail to act in any way whether knowingly, recklessly, or negligently which may or will impair the operation of all or part of the Services;
 - (e) not be involved in or knowingly, recklessly or negligently permit or negligently allow any other party to be involved in any fraudulent or other unauthorised use or attempted use of the Services by corrupt or dishonest or illegal means at any time and shall notify Optus immediately upon becoming aware of or suspecting such activity; and

- (f) use the Optus SIM card(s) solely in combination with the Telematics Device(s) and for transmitting Location Data between the Fleet and the Cloud-based Software Platform.
- 10.2 You represent and warrant that you have lawful possession or control of the Fleet and are authorised to provide consent to Optus and the Third Party Service Provider to collect Location Data. By continuing to use the Services, you consent to Optus and the Third Party Service Provider collecting the Location Data for the purpose of providing the Services and you acknowledge that Optus and the Third Party Service Provider shall rely on this consent.
- 10.3 You warrant that:
 - (a) you have all authority and consent necessary to enable Optus and/ or Third Party Service Provider to use and/or disclose Personal Information and Location Data for the purpose of providing the Services; and
 - (b) you have complied with and will continue to comply with your obligations under the Privacy Law.
- 10.4 In using the Service, you must comply with Optus' Fair Go Policy and any rules imposed by any third party whose Content or services you access using the Service or whose network your data traverses.
- 10.5 In relation to the Cloud-based Software Platform, you undertake that:
 - (a) you will not allow any account profile to be used by any other unregistered user unless it has been reassigned in its entirety to another individual, in which case the prior individual will no longer have any right to access or use the account;
 - (b) you will keep a secure password for the use of the account/s, that such password will be changed as frequently as is required by us in our absolute discretion, and that you will keep the password confidential;
 - (c) you will only authorise named administrators and/or end users to use the Service and will maintain an up-to-date register of these authorised personnel and make it available for Optus' inspection at all times on request;
 - (d) you will permit Optus to audit the accounts in order to establish compliance with this Agreement; and
 - (e) if any of the audits referred to above reveal that any password has been provided to any individual who is not registered to a Cloud-based Software Platform account, then without prejudice to Optus' other rights, you will promptly disable such passwords and Optus will not issue any new passwords to any such individual.

11. SERVICE REQUIREMENTS AND LIMITATIONS

You acknowledge and agree that:

- 11.1 Service Restrictions
 - (a) You may not use the Service overseas.

- (b) The Service is only available for use with new SIM connections. The Service does not include and does not support the migration of existing mobile data services to the Optus Telematics Service.
- (c) The Optus SIM Card must not be used:
 - (i) with SIM cards/chips that have been on-sold to third parties;
 - (ii) to transit, refile or aggregate domestic or international traffic on the Optus Mobile Network; or
 - (iii) in connection with a device that switches or reroutes calls to or from the Optus Mobile Network, or the network of any supplier or other Optus Group Company.

11.2 Connection Speed

- (a) The speed of the Service will depend on, among other things, the data transfer speeds and factors including:
 - (i) the type of Optus Mobile network used to connect to the Service. For example, you may obtain faster data transfer speeds on the Optus 4G Network compared to the Optus 3G Network;
 - (ii) the type of Telematics Device used to connect to the Service;
 - (iii) the location of the Telematics Device when using the Service;
 - (iv) the number of users sharing the Optus Mobile network at the location;
 - (v) the speed of the connection chosen between the Optus Mobile network and your private enterprise IP data network;
 - (vi) general private enterprise IP data network activity;
 - (vii) the speed and capacity of the server or application your access within your private enterprise IP data network;
 - (viii) the speed and capacity of your internet connection; and
 - (ix) whether any speed throttling has been applied to Telematics Device.

11.3 General

- (a) The Service does not include remediation works required to ensure that your network or systems are sufficient to run the Optus Telematics Service.
- (b) Optus may vary the Service or any term of this Service Description, without liability, if reasonably required to do so to enable Optus to comply with any supplier agreement.
- (c) As the Service is delivered over the internet, it may traverse networks and equipment that Optus has no control over. Optus will not be responsible for the performance and functionality of those components.
- (d) Optus is not able to guarantee data network quality of the Service, where your Access Connection is interrupted.

- (e) You will comply with, and will use all reasonable endeavours to ensure each End User complies with, all directions of a Regulator and all reasonable directions of Optus.

12. THIRD PARTY PRODUCTS & SERVICES

- 12.1 The Optus Telematics Services include the on-supply of third party Products and services. Optus is not the manufacturer of the Products, or the primary provider of these services. As far as the law allows, Optus does not offer any warranties for the products or services where Optus is not the manufacturer or primary service provider. The warranties available on third party products and services are as set out in the Third Party Usage Terms.
- 12.2 If the Third Party Service Provider supplies you with a unique, personalised username and password to enable you to access the Cloud-based Software Platform and use the Services. You are responsible for the security of any username or password.
- 12.3 Optus may cancel your right to use the third party Products or services by notice to you where:
 - (a) the Third Party Service Provider ceases to supply the third party Product or Service for any reason; or
 - (b) if you fail to agree or comply with the Third Party Usage Terms;
- 12.4 You acknowledge and agree that the Third Party Service Provider of the Telematics Device is a third party beneficiary of your right of use and may enforce the terms of your right of use directly.

13. SPECIAL CONDITIONS

Changes to Software and Telematics Device

- 13.1 The Third Party Service Provider may, in its sole discretion, make non-material changes in the form and function of the software, and changes to the Telematics Device and any third-party software requirements, without liability to you, as long as such changes do not remove or limit functionality of the software existing at the time of purchase or in its current state. Third Party Service Provider will inform you promptly of any such changes.
- 13.2 You will not make, or attempt to make, any modification of any kind to the software or the Telematics Device, other than to configure or modify the software and any related databases as necessary to use the software for its intended purpose. You will not allow any third-party access to the software for purposes other than for configuration and routine maintenance without first obtaining written consent for such access from Optus and / or the Third Party Service Provider.
- 13.3 A warranty (if any) in respect of the software and Telematics Device will become null and void upon your improper use or inadequate management or supervision of the system, or if you are responsible for any of the following:
 - (a) any modification to the object code of the software other than at the direction of or with the approval of Optus or the Third Party Service Provider,

(b) failure to perform maintenance or follow operating instructions prescribed in writing by Optus or the Third Party Service Provider,

(c) failure to comply with the Telematics Device and software requirements set out in any document supplied with the Telematics Device, or

(d) failing, in the event of problems with the software, to reasonably co-operate with and follow reasonable directions of Optus or the Third Party Service Provider.

Data

- 13.4 You authorise Optus and / or Third Party Service Provider to retain and use your data, including any data provided by you for the purpose of providing the Services to you and carrying out data analytics in relation to the services provided to their customers and otherwise developing new products and services.
- 13.5 The Service relies for its operation on services supplied by third parties, including the Third Party Service Provider who are not controlled by Optus. The Cloud-based Software Platform is hosted in Australia. The Third Party Service Provider will have access to your information which may include your company name and address, administrator name and email address, Service usage details and billing data. In using the Service, you and your personnel consent to Optus or our third party, including the Third Party Service Provider to use this information.
- 13.6 On the expiry of the agreement or at the end of the term, you may request the Third Party Service Provider to delete your user records.

Privacy

- 13.7 You are responsible for any data privacy, employee relations or other purposes for which you may use the Products and Services.
- 13.8 You have to comply with all provisions of the Privacy Law. This includes your obligation to duly inform individuals engaged as drivers in the Fleet about the collection, use and/or disclosure (as applicable) of their Personal Information by Optus and Third Party Service Provider. You acknowledge that it is your responsibility to conduct all relevant data privacy impact assessments and to assure yourself of the basis of its collection, use and/or disclosure of Personal Information and that your privacy policies are adequate.
- 13.9 Optus and Third Party Service Provider will only collect, store, and use Personal Information, and the Location Data to the extent that such is necessary for the performance of the Service.
- 13.10 You instruct Optus and the Third Party Service Provider to collect, store and use the Personal Information for the purpose of providing the Service.

Intellectual Property

- 13.11 The Third Party Service Provider or its licensors retain ownership of all intellectual property rights in and to the software, including copies, improvements, enhancements, derivative works and modifications thereof. Your rights to use the software are limited to those expressly granted by the Third Party Service Provider, including the Third Party Usage Terms. No other

rights with respect to the software or any related intellectual property rights are granted or implied.

- 13.12 The Third Party Service Provider grants to you under its Third Party Usage Terms a non-exclusive, non-transferrable, and perpetual right to use the software in object code form and in the quantities set out in the statement of work. You may create a reasonable number of archival and backup copies of the software, provided that the quantities agreed is not exceeded and that all proprietary rights notices, names and logos of the Third Party Service Provider are duplicated on each copy.
- 13.13 You acknowledge and agree that the Third Party Service Provider owns all right, title and interest in the software, including, without limitation, all intellectual property rights. You acknowledge and agree that the software contains proprietary and confidential information and trade secrets including, but not limited to source code, text, graphics, logos, images, and icons, that are protected by international intellectual property laws and other applicable laws. You acknowledge that all use of the system outside the scope of the terms of Third Party Usage Terms without first obtaining the Third Party Service Provider's written consent shall be an infringement of the Third Party Service Provider's exclusive right, title and interest in and to the software.
- 13.14 You will not, directly or indirectly, disassemble, decompile, or reverse engineer the software. Any such disassembly, decompiling, or reverse engineering by you, will be an infringement of the Third Party Service Provider's exclusive proprietary right, title and interest in and to the software.

Confidentiality

- 13.15 You agree that during the term of the agreement and thereafter, you will maintain the confidentiality of the Third Party Service Provider's software, system and the Cloud-based Software Platform.

14. DEFINITIONS

Terms not defined in these Service Terms are as defined in the Service Family Terms or the General Terms (in that order).

Term	Definition
Access Connection	means a telecommunications data service between your nominated equipment and our provider edge routers in an Optus exchange.
Cloud-based Software Platform	means the Third Party Service Provider hosted platform in Australia
Fair Go Policy	means the Optus policy located at https://www.optus.com.au/about/legal/standard-forms-agreement/appendices
Fleet	means the vehicles or assets to be tracked or traced via the Services
Location Data	means data on the geographical position of the Fleet and other messages sent to or by the Fleet.

Optus SIM Card	means the Optus local SIM card, SIM chip or virtual SIM
Service Family Terms	mean the terms applicable to each Service Option as set out in Part 1 of this Service Description
Service Terms	means these product/service specific terms.
Telematics Device	means the embedded in vehicle telecommunications endpoint device(s) in which the Optus SIM Card is inserted to connect to the Optus mobile network. A list of available devices is available from your Optus account manager.
Third Party Service Provider	means WorkM8 Solutions Pty Ltd. ABN 30 622 724 234
Third Party Usage Terms	means the terms included in this Service Description (for clarity, these Service Terms and IOT Family Terms) and the Third Party Service Provider EULA which may be updated from time to time, in Annexure A to this Service Terms.

ANNEXURE A:

WORKM8 SOFTWARE EULA

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE USING THE SOFTWARE. BY INSTALLING AND USING THE WORKM8 SOFTWARE, YOU ARE CONSENTING TO BE BOUND TO THE TERMS AND CONDITIONS SET OUT IN THIS DOCUMENT.

In this document “WorkM8” means WorkM8 Solutions Pty Ltd (ACN 622 724 234) of NSW, Australia, “you” and “End-User” means the person or corporation who is agreeing to be a Party to this agreement, “EULA and “this Agreement” mean the terms and conditions set out in this document and any other document in writing between the Parties in respect of the Software, “Software” means the electronic software purchased by the End User from WorkM8, and “Hardware” means any electronic hardware supplied by WorkM8 to the End User to enable the Software to function. NOW, THEREFORE, for valuable consideration, the adequacy and sufficiency of which are hereby expressly acknowledged by both Parties, the Parties agree as follows:

1. License Grant. WORKM8 hereby grants, and the End-User hereby accepts pursuant to the terms of this EULA, and any attached schedules, addenda or other contracts which refer to this EULA, a nonexclusive, non-transferrable, and perpetual right to use the Software in object code form and in the quantities set forth in a corresponding purchase order through any reseller. The End User may create a reasonable number of archival and backup copies of the Software, provided that the quantities agreed is not exceeded and that all proprietary rights notices, names and logos of WORKM8 are duplicated on each copy.

2. Restrictions. WORKM8 may, in its sole discretion, make non-material changes in the form and function of the Software, and changes to the Hardware and third-party software requirements set forth in a system requirements document specified by WorkM8 to the End User, without liability to the End-User, as long as such changes do not remove or limit functionality of the Software existing at the time of purchase or in its current state. WORKM8 will inform the End-User promptly of any such changes. The End-User shall not make, or attempt to make, any modification of any kind to the Software or the Hardware, other than to configure or modify the Software and any related databases as necessary to use the Software for its intended purpose. The End-User shall not allow third-party access to the Software for purposes other than for configuration and routine maintenance without first obtaining written consent for such access from WORKM8.

3. WorkM8’s Rights. The End-User acknowledges and agrees that WORKM8 owns all right, title and interest in the Software, including, without limitation, all intellectual property rights. The End-User acknowledges and agrees that the Software contains proprietary and confidential information and trade secrets including, but not limited to source code, text, graphics, logos, images, and icons, that are protected by international intellectual property laws and other applicable laws. Subject to any exceptions set forth in any copyright laws, The End-User acknowledges that all use of the system outside the scope of the terms of this EULA, including all attached schedules, without first obtaining WORKM8’s written consent, which consent may be withheld by WORKM8 for any reason, shall be an infringement of WORKM8’s exclusive right, title and interest in and to the Software. The End-User shall not, directly or indirectly, disassemble, decompile, or reverse engineer the Software. Any such

disassembly, decompiling, or reverse engineering by the End-User, shall be an infringement of WORKM8's exclusive proprietary right, title and interest in and to the Software.

4. Ownership. WorkM8 or its licensors retain ownership of all intellectual property rights in and to the Software, including copies, improvements, enhancements, derivative works and modifications thereof. Your rights to Use the Software are limited to those expressly granted by this EULA. No other rights with respect to the Software or any related intellectual property rights are granted or implied.

5. Confidentiality. The End-User agrees that during the term of the EULA and thereafter, the End-User shall maintain the confidentiality of the Software and System to the same extent and by the same mechanisms that it uses to protect its own trade secrets. The foregoing obligations will not apply to information that is in the public domain through no fault of the End-User, that was independently developed by the End-User, that was rightfully received by the End-User from a third party without a duty of confidentiality, or that was disclosed by WORKM8 to the public or to a third party without an obligation of confidentiality.

6. Limited Warranty. WORKM8 represents and warrants that upon installation and during the term of the EULA, the Software will perform for one (1) year from installation in accordance with the general functional specifications.

7. Internet Connection. The End User acknowledges that the functionality of the Software is dependant, amongst other things, on the quality of any Wi-Fi, Bluetooth or other connection to the internet used by the End User. WorkM8 does not warrant that the Software will always function in circumstances where the internet connection is in any way limited or not functioning.

8. GPS/Location data. The End User acknowledges that the functionality of the Software is dependant, amongst other things, on the quality of any Global Positioning Satellite data received by third party hardware and transmitted to workM8 software. WorkM8 does not warrant that the Software will always function in circumstances where the GPS data is in any way limited or not functioning.

9. Acts Voiding Limited Warranty. Notwithstanding any other provision herein, the limited warranty above shall become null and void upon the End-User's improper use or inadequate management or supervision of the System, or if the End-User is responsible for any of the following:

- (a) any modification to the object code of the Software other than at the direction of or with the approval of WORKM8,
- (b) failure to perform maintenance or follow operating instructions prescribed in writing by WORKM8,
- (c) failure to comply with the Hardware and third-party software requirements set out in any document supplied with the Hardware, or
- (d) failing, in the event of problems with the Software, to reasonably co-operate with and follow reasonable directions of WORKM8.

10. Warranty Notice. The foregoing warranties by WorkM8 are in lieu of all other warranties, either expressed or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose. Workm8 disclaims all other warranties. The End-user disclaims all

warranties, either expressed or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose.

11. Australian Consumer Law. If the Australian Consumer Law or any other legislation implies into, or in relation to, this EULA any warranty or statutory guarantee which cannot be excluded, then such warranty or statutory guarantee will apply but only to the extent that it cannot be so excluded. If there is a breach of any such warranty or statutory guarantee, then workm8's liability shall be limited (where permitted under the relevant legislation), at workm8's option, to:

- (a) in respect of Software and Hardware: replacement of any defective part, the payment of the cost of replacement, the repair of the Hardware or Software, or the payment of the cost of having the goods repaired; or
- (b) in respect of services: the resupply of the services or the payment of the cost of having the services resupplied.

12. Implied Warranties. If, notwithstanding any limitation expressed in this EULA, WORKM8's Software and Hardware come with guarantees that cannot be excluded under the Australian Consumer Law, you are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

13. Limitation of Liability. In addition to and not by way of limitation of any other limitations herein on the respective liabilities of WORKM8 and the End-User or imposed by law:

- (a) The Parties agree that, except as otherwise stated in the EULA, a Party will in no event be liable to the other Party for compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of the other Party or otherwise, even if the Party from whom compensation is sought has been advised of the possibility of such damages. The Parties further agree that a Party will not be liable for any claim or demand brought against one or both of them by any third party, except as otherwise stated in this EULA.
- (b) Unless otherwise provided herein, neither party shall, under any circumstances, be liable to the other party or any other party for consequential, incidental, special or exemplary damages or damages for lost business profits, business interruption or loss of business information, even if the party from whom compensation is sought has been advised of the possibility of such damages.
- (c) Except to the extent that liability arises from instances of either party's gross negligence or wilful misconduct, each party's liability for damages under this EULA, whether in an action in negligence, contract or tort or based on a warranty, or claim of infringement, shall in no event exceed the price paid by the End User to WorkM8 for the Software and Hardware.

14. Amendments; Duplicates. No changes or amendments to the EULA, including any schedule attached hereto, shall be effective unless and until it is in writing referencing the EULA and is signed by both Parties hereto. The EULA may be executed in one or more counterparts, each of which shall be considered an original for all purposes.

15. Governing Law. The EULA shall be governed by the laws of the State of New South Wales, Australia.

16. Force Majeure. In the event of acts of God or of a public enemy, or strikes, fire, flood, natural disaster, or control exercised by any governmental entity, any of which render performance under the EULA impossible for a Party, that Party's failure based on these conditions during such period shall be excused and shall not be considered a breach under the terms of the EULA.

17. Invalid Provision. The Parties hereto agree that the terms of the EULA are reasonable; however, if any of the provisions of the EULA are held to be unenforceable, it is expressly understood and agreed between the Parties hereto that the court or agency making such determination shall be empowered to modify such provision to make it enforceable, if possible, but to the least extent necessary for that purpose, and such provision shall then be applicable in such modified form.

18. Binding and Entire Agreement. The EULA shall be binding upon and inure to the benefit of each Party, its successors, subsidiaries, distributors, and agents. The EULA constitutes the entire EULA between the Parties and supersedes any prior understandings and EULAs, either oral or written.

19. Assignment. The End-User's rights and obligations under the EULA shall be non-transferable, in whole or in part, by assignment or otherwise, without prior written approval from WORKM8, except that the End-User can transfer its rights and obligations under the EULA to any entity with which it may be consolidated or merged, or which acquires all or substantially all of its assets or stock, or with which it is affiliated by common ownership or control, without receiving WORKM8's approval.

20. Waiver. Any waiver by either Party of a breach of any provision of the EULA shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of the EULA. The failure of a Party to insist upon strict adherence to any term of the EULA shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of the EULA. All such waivers must be in writing.

21. Dispute Resolution. If a dispute arises then any Disputing Party may give written notice to the other Disputing Party or Parties specifying the nature of the dispute (a "Dispute Notice"), and the following provisions of shall apply;

- (a) No Disputing Party may commence any proceedings on the dispute (except where the Disputing Party seeks urgent interlocutory relief) unless it has first complied with this clause.
- (b) If a Dispute Notice is served:
 - (i) the Disputing Parties will each nominate one representative with authority to settle and resolve the dispute; and
 - (ii) such representatives will enter into negotiations in good faith to attempt to resolve the dispute within 5 Business Days (or such longer period as the Parties may agree) of the date of the Dispute Notice (the "Negotiation Period").
- (c) In the event that the dispute remains unresolved at the end of the Negotiation Period, or an appropriate alternative dispute resolution process is not agreed, then the parties must endeavour to settle any dispute in connection with the contract by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any

party's notice of dispute, by a person appointed by the Chair of Resolution Institute, (ACN 008 651 232, Level 2, 13-15 Bridge Street, Sydney NSW 2000; telephone: 02 9251 3366, email: infoaus@resolution.institute) or the Chair's designated representative.

- (d) The Resolution Institute Mediation Rules shall apply to the mediation.
- (e) It is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.
- (f) This clause will remain operative after the contract has been performed and notwithstanding its termination.
- (g) Nothing in this clause will prevent any Party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.