

General Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

- (1) **Agreement** means this document, including any schedule or annexure to it.
- (2) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where the RollCall Services are being supplied.
- (3) **Business Hours** means 9am to 5pm on a Business Day.
- (4) **Claim** means any action, claim, suit, demand or proceeding of whatever nature.
- (5) **Customer Data** means any information provided by or pertaining to Customer generated, sent, received and/or stored by electronic means pursuant to this Agreement.
- (6) **Customer** means the party so described on the cover page of this Agreement and includes all persons using Customer's Login Credentials.
- (7) **End User** means any person or organisation that Customer allows to use a RollCall Device, RollCall App or Online Services, including Customer and its employees.
- (8) **Hardware** means RollCall Devices, NFC Media and other items of Hardware listed in Schedule 2, which RollCall supplies for use by the Customer as part of the RollCall Service.
- (9) **Initial Term** of this Agreement means the period so described in Schedule 2 or, if no period is given, 36 months from the date of this Agreement.
- (10) **Insolvency Event** means the happening of any of these events:
 - (a) a party is (or is deemed to be) insolvent under ordinary legal principles;
 - (b) a party suspends payment of its debts or ceases to carry on business; or
 - (c) a party becomes an externally-administered body corporate.
- (11) **Login Credentials** means user names and passwords referred to in clause 5.4.
- (12) **Loss** means loss, damage, liability, cost, expense, tax, outgoing and the like of whatever nature.
- (13) **NFC Medium** means a Near Field Communications Medium in the format

supplied by RollCall from time to time, such as tags, wristbands and readable cards.

- (14) **Online Services** means web based services having the functionality set out in the software application described in Schedule 3, and the RollCall App.
- (15) **Pricing Schedule** means Schedule 2 - RollCall Service Description and Pricing Schedule.
- (16) **Personal Information** means personal information, as defined in the *Privacy Act 1988* (Cth), or any opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a person whose identity is apparent or can reasonably be ascertained from the information or opinion.
- (17) **RollCall App** means the web application RollCall makes available on the RollCall Device as part of the RollCall Services, with functionality as further described in Schedule 3.
- (18) **RollCall Device** means a hand held device owned by RollCall and supplied for Customer's use, capable of hosting the RollCall App and being used for RollCall Services.
- (19) **RollCall Services** has the meaning given on the cover page of this Agreement.
- (20) **Support Services** means the services so described in Schedule 3.
- (21) **Website** means the website at the address www.rollcall.com.au or such other web address as may be specified by RollCall from time to time.

1.2 Interpretation

- (1) Reference to:
 - (a) the singular includes the plural and the plural includes the singular;
 - (b) a person includes a body corporate;
 - (c) a party includes the party's executors, administrators, successors and permitted assigns;
 - (d) a thing includes the whole and each part of it separately;
 - (e) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and

- (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
- (f) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) A provision of this Agreement must not 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.
- (6) If an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day.
- (7) A party that is a trustee is bound both personally and in its capacity as a trustee.

2 Term

- 2.1 This Agreement will commence on the date the last party signs and continue until terminated in accordance with Clause 13, subject to clause 2.2.
- 2.2 Following termination of this Agreement, this Agreement (and applicable charges) will continue to apply to each item of Hardware and associated RollCall Services that the Customer continues to use, until that item of Hardware is returned to RollCall.

3 Orders and Payment

- 3.1 RollCall agrees to supply and Customer agrees to purchase RollCall Services at the prices and on the payment terms set out in the Pricing Schedule.
- 3.2 RollCall may make available a process for Customer to lodge and RollCall to accept orders from Customer, in which case the parties must follow that process.
- 3.3 If Customer disputes an invoice for RollCall Services it must pay the undisputed amount (if any) on the due date, and may withhold the disputed amount only if it reasonably disputes the amount and notifies RollCall of the dispute prior to the due date. The parties must endeavour to resolve the dispute by negotiation in good faith.

4 Use of Hardware

- 4.1 RollCall makes the Hardware including the RollCall Devices available for use by the Customer. The Hardware remains the property of RollCall at all times, unless from time to time RollCall agrees

to sell Customer specific items of Hardware. Absent such agreement, no title or interest in any item of Hardware passes to the Customer at any time.

- 4.2 Customer acknowledges that RollCall Devices and the Online Service establish the location of an NFC Medium reading event. Customer will use reasonable endeavours to ensure that RollCall Devices and Online Service are used strictly in accordance with all applicable laws, including applicable surveillance device and workplace surveillance laws.

5 Licence

- 5.1 RollCall grants Customer a non-exclusive licence to use RollCall Devices and Online Services in accordance with the terms of this Agreement. Nothing in this Agreement or otherwise entitles Customer to any other rights, ownership or property in any RollCall Device or Online Services.
- 5.2 Subject to any laws that may not be legally excluded, the Customer must not reverse engineer, disassemble, decompile or otherwise reduce the RollCall Device or Online Services into any form.
- 5.3 Online Services are accessed wholly or in part through the Website. Customer is responsible for its own internet connection to the Website.
- 5.4 Access to the Online Services is restricted by a login system and may not be accessible without a username and password pair (Login Credentials). Customer may register and create Login Credentials by following the registration process on the Website,
- 5.5 Customer must keep all Login Credentials safe and secure and must not disclose to, or share the Login Credentials with, any third party.
- 5.6 Customer must immediately notify RollCall if Customer knows that any Login Credential has been compromised.
- 5.7 Customer is entirely responsible for any access to the Online Services using Login Credentials that are registered to the Customer, and acknowledges and agrees that any access to or use of the Online Services by means of Login Credentials is deemed to be access or use by Customer irrespective of whether or not Customer in fact accessed or used the Online Services. This includes any upload, amendments to or download of Customer Data.
- 5.8 RollCall may update, replace or vary any aspect of the RollCall Services and the Hardware without the prior consent of Customer, at RollCall's expense, provided that such update, replacement or variation does not materially reduce the functionalities and features of the RollCall Services and that RollCall provides

reasonable notice to Customer of any such updates, replacements or variations.

6 Customer Data

- 6.1 RollCall will protect Customer Data from being accessed by unauthorised persons and ensure that Online Services are provided, and Customer Data is transmitted and stored, in a secure environment.
- 6.2 RollCall may use Customer Data only for legitimate purposes relating to RollCall's performance of this Agreement.
- 6.3 To the extent that Customer Data is Personal Information or confidential information of an End User, the Customer:
- (a) acknowledges that it is the Customer's responsibility to obtain consent from each End User to the use and disclosure of the Personal Information or confidential information by the Customer and RollCall for the purposes contemplated by this Agreement, and
 - (b) warrants that it has obtained and will maintain such consent at all times during the term of this Agreement.

7 Service Interruptions

- 7.1 RollCall does not guarantee that it can provide continuous or fault free services. Customer acknowledges that RollCall Devices use public wireless telephone networks to transmit data to and from the Online Services and that the Online Services may not function accurately at all times and all locations due to various issues such as:
- (a) wireless transmission range and capacity limitations and wireless carriers capacity limitations;
 - (b) atmospheric, terrain and geographic conditions;
 - (c) other natural or artificial environment conditions or events beyond RollCall's direct control;
 - (d) government regulations or limitations;
 - (e) restrictions by the wireless carriers (for example, inter-carrier roaming agreements)
 - (f) usage concentrations, modifications, upgrades, relocation and repairs of transmission facilities by the Wireless Carrier;
 - (g) incompatibility, software and hardware upgrades and version issues, and capacity and systems management issues in any of the systems and platforms RollCall relies on to provide the Online Services end to end;

- (h) absence of a clear line of sight between the Vehicles and the wireless Phone network towers;
- (i) electrical storms, power failures, interruption or unavailability of telephone service, cellular and radio frequency; and
- (j) strikes, riots, floods, fires and acts of God.

7.2 RollCall will use reasonable endeavours to ensure that scheduled outage and maintenance of Online Services occur outside of Business Hours.

7.3 RollCall may limit, interrupt, suspend or alter access to Online Services and Support Services either with immediate effect or after providing reasonable notice in the circumstances, noting RollCall will aim to provide at least 5 Business Days written notice where practical:

- (a) for updates, maintenance and repairs (whether preventative or remedial);
- (b) if the Customer has materially breached this Agreement (including failure to pay any amount due) and does not remedy such breach within 10 Business Days of receipt of a written notification from RollCall;
- (c) if RollCall has established to the Customer's reasonable satisfaction that the any part of the RollCall Services has been misused by the Customer or End User; or
- (d) if RollCall has established to its reasonable satisfaction that Customer's Login Credentials have been compromised or disclosed in an unauthorised manner.

7.4 RollCall must cease any suspension of, and must resume providing, RollCall Services once the event or circumstance giving rise to the suspension right under clause 7.3 is cured or has ceased.

8 Warranties and disclaimers

- 8.1 From time to time, RollCall may agree to sell items of Hardware to the Customer. In that event, RollCall will use reasonable endeavours to assign to the Customer the benefit of all supplier or manufacturer warranties in respect of Hardware subject to the terms, conditions and limitations imposed by the supplier or manufacturer.
- 8.2 RollCall warrants that the Online Services and Support Services will be provided with the degree of care, skill and professionalism which would reasonably be expected from an experienced provider of similar services and shall comply with all Federal and State laws, rules and regulations.
- 8.3 RollCall warrants that it is entitled to use and deal with any intellectual property rights which may be used in connection

with the RollCall Devices and Online Services and that the supply of the RollCall Services will not infringe the intellectual property rights of any third party.

- 8.4 RollCall warrants that RollCall Services will contain the features and functionalities set out in the descriptions of the RollCall Services in this Agreement.
- 8.5 Except for the warranties expressly provided under this Agreement, and to the maximum extent permitted by law, RollCall excludes all other warranties, terms, conditions, undertakings, consumer guarantees and representations (express, implied, statutory or otherwise) relating to the RollCall Services, including any representations or consumer guarantees:
- (a) as to quality and durability;
 - (b) that the Online Services are error-free or have no defects, or are free from viruses, worms or trojans; or
 - (c) that the RollCall Services meet the Customer's requirements or are compatible with the Customer's computer system.
- 8.6 In relation to any condition, warranty, consumer guarantee, representation implied or provided by law that cannot be excluded, where permitted by law, RollCall's liability is limited, at the sole discretion and option of RollCall, to supplying the RollCall Services again or payment of the cost of having the equivalent services supplied again.

9 Liability

- 9.1 To the extent permitted by law, RollCall will not be liable for, and the Customer releases RollCall from, any Claim or Loss, arising out of and to the extent directly or indirectly caused by:
- (a) Customer's use of or reliance on the electronic maps, map displays or suggested milestones that may be made available to Customer as part of the Online Services;
 - (b) any invalid or incorrect Customer Data;
 - (c) any failure, interruption or inaccuracy of the RollCall Services as described in clause 7 Service Interruptions; or
 - (d) any failure, interruption, delay, suspension or error in the RollCall Services to the extent it is directly or indirectly caused by any negligent act or omission of Customer or any third person.
- 9.2 To the extent permitted by law, neither party will be liable to the other party in any circumstances for any indirect, economic,

special or consequential loss or damage, or in any event for any loss of revenue, loss of production, loss of profit or loss of data.

- 9.3 Each party's liability to the other will be reduced to the extent that the liability is attributable to the breach of this Agreement or any negligent or unlawful act or omission of the other party.
- 9.4 To the extent permitted by law, RollCall's aggregate liability to the Customer under or in connection with this Agreement shall not in any event exceed the total amount paid or payable by the Customer to RollCall under this Agreement during the term of this Agreement.

10 Indemnity

- 10.1 The Customer indemnifies RollCall in full for the cost to RollCall of any Claim or Loss claimed against RollCall by an End User or other third party in relation to the RollCall Services, including for any costs incurred by RollCall in defending itself against such Claim or Loss.

11 Privacy

- 11.1 Subject to clause 11.2, Customer acknowledges and agrees that RollCall may collect, use and disclose certain Personal Information (including Personal Information collected as part of the registration of Login Credentials) to be used for the sole purpose of providing RollCall Services and that such Personal Information may be stored on the McQuarie Teir III or such other location as may be selected from time to time by RollCall.
- 11.2 RollCall must comply, and must ensure that all of its third party technology partners comply, with all applicable privacy laws in relation to the collection, use and disclosure of Personal Information obtained by it pursuant to this Agreement.

12 Intellectual property rights

All intellectual property rights in the RollCall Services, including but not limited to trademarks, copyrights, patents and design rights in and to the Hardware and Online Services, shall belong to and remain the property of RollCall and its licensors. Nothing contained in this Agreement shall be construed to the contrary or as conferring or transferring any ownership rights in the same to Customer.

13 Goods and services tax

12.1 In this clause:

- (a) GST means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended (GST Act) or any replacement or other relevant legislation and regulations;

- (b) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (c) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (d) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (e) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

12.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.

12.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

12.4 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

13 Termination

13.1 Either party may terminate this Agreement for convenience at any time by giving at least 21 Business Days written notice to the other party, provided that no such notice shall be given during the Initial Term.

13.2 RollCall may terminate this Agreement by providing 10 Business Days notice

to the Customer, if the Customer has materially breached this Agreement (including failure to pay any amount due) and does not remedy such breach within 10 Business Days of receipt of a written notification from RollCall;

13.3 Customer may terminate this Agreement by giving at least 10 Business Days written notice to the RollCall if any of the following occurs:

- (a) the Website (including each functionality of the Website) is unavailable or inaccessible more than 5% of the time over a period of at least [one month];
- (b) RollCall becomes unable to secure or retain the connections or privileges necessary for the transmission of data for the normal operation of the RollCall Device.

13.4 In addition to the termination rights under clauses 13.2 and 13.3, a party may immediately terminate this Agreement upon giving notice in writing to the other party if that other party:

- (a) commits a material breach of any of its obligations under this Agreement and does not remedy the breach within 10 Business Days of receipt of written notification to do so;
- (b) is the subject of an Insolvency Event;
- (c) commits an act of gross misconduct including fraud, forgery, theft, dishonesty, malfeasance, wilful misconduct or any other act in violation of applicable laws; or
- (d) performs any act that is materially harmful to the best business interests or reputation of the other party.

13.5 Termination of this Agreement does not prejudice the existing rights and remedies of either party.

13.6 Upon termination of the Agreement for any reason:

- (a) RollCall may suspend or cancel all Login Credentials and the Customer's access to the Online Services;
- (b) all Customer Data must, at the direction and expense of the Customer be provided to the Customer in a format which is readable and acceptable to the Customer
- (c) at Customer's sole cost, the Customer must promptly return all Hardware (except any Hardware that RollCall has agreed to sell to the Customer) to an address in Australia nominated by RollCall, in good condition, or pay RollCall the reasonable replacement cost set out

- in the Pricing Schedule for each item.
- (d) the Customer must immediately pay all outstanding fees and charges and invoices; and
 - (e) RollCall must refund any fees or charges relating to a period after the date of termination which have been prepaid by the Customer.
- 13.7 Clauses 1, 8.1, 8.6, 8.7, 8.8, 9, 10, 11, 13, 14.2, 14.3, 14.7, 14.9 and 14.11, survive any termination or expiry of all or part of this Agreement.

14 General

- 14.1 **Costs** - Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.
- 14.2 **Entire Agreement** - This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 14.3 **Variation** - An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- 14.4 **Permitted disclosure** - Customer and RollCall must keep terms of this Agreement confidential, but they may disclose this Agreement or Customer Data on a confidential basis as required by law and to their respective advisors for the purposes of seeking advice. RollCall must ensure that Customer Data is kept confidential and must not disclose Customer Data to any third parties except in the course of the ordinary operation of RollCall's business and subject to equivalent confidentiality obligations, or as required by law, or with the prior written consent of Customer.
- 14.5 **Force Majeure** - Neither party will be liable to the other party for any failure to perform or delay in performing its obligations under this Agreement caused (in whole or in part) by events that are beyond its reasonable control, including acts of terrorism, labour disputes, transport delays, data-communication delays, inability to obtain products or supplies, fires, explosions, contamination, civil disobedience, mechanical breakdown, weather, acts of God, government action or regulation, computer software error or any substantially similar event. In those circumstances the affected party may delay or suspend the performance of its obligations until without any liability to the other party. The affected party must take all reasonable steps to overcome or minimise the effect of the event.
- 14.6 **No assignment** - Neither party may assign, transfer or novate all or any of its rights and obligations under this Agreement without the prior written consent of the other party.
- 14.7 **Capacity** - Customer and RollCall warrant that the person signing this Agreement has the due authority and capacity to act on its behalf.
- 14.8 **No waiver** - A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 14.9 **Severability** - If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.
- 14.10 **Notices** - All notices given under this Agreement must be in writing and either personally delivered to the address of the addressee set out in this Agreement (or subsequently notified), sent by prepaid post to the address of the addressee set out in this Agreement (or subsequently notified), sent by email to the email addresses (as notified from time to time) or sent by facsimile to the facsimile number of the addressee (as notified from time to time). Such notices shall be deemed to be received in the case of delivery, upon delivery, in the case of prepaid post, on the second Business Day after posting, in the case of email, four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered and in the case of facsimile, if sent before 5.00pm on a Business Day at the place of receipt, on the day it is sent, and otherwise on the next Business Day at the place of receipt.
- 14.11 **Governing law** - The law of Victoria, Australia, governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.
- 14.12 **Counterparts** - This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement. This Agreement is binding on the parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by facsimile machine or by email must be treated as an original counterpart, is sufficient evidence of the

execution of the original and may be produced in evidence for all purposes in place of the original.

