

## General Terms and Conditions – RollCall Services

### 1 Definitions

In this Agreement:

- (1) **Agreement** means these General Terms and Conditions and the Services Schedule.
- (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 Victoria.
- (3) **Claim** means any action, claim, suit, demand or proceeding of whatever nature.
- (4) **Customer Data** means any information provided by or pertaining to the Customer generated, sent, received and/or stored by electronic means pursuant to this Agreement.
- (5) **Customer** means the party so described in the Services Schedule.
- (6) **End User** means any person or organisation that the Customer allows to use the RollCall Services.
- (7) **Hardware** means the hardware to be provided by RollCall to the Customer and described in the Services Schedule.
- (8) **Initial Term** of this Agreement means the period so described in the Services Schedule.
- (9) **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.
- (10) **Login Credentials** means user names and passwords to use the RollCall Services.
- (11) **Loss** means loss, damage, liability, cost, expense, tax, outgoing and the like of whatever nature.
- (12) **Pricing Schedule** means the price and payment terms for the RollCall Services set out in the Services Schedule.
- (13) **Personal Information** means personal information as defined in the *Privacy Act 1988* (Cth).
- (14) **RollCall** means Roll Call Safety Solutions Pty Ltd (ABN 13 607 732 758).
- (15) **RollCall Services** has the meaning given to it in the Services Schedule.
- (16) **Services Schedule** means the 'RollCall Services Schedule' executed and entered into between RollCall and the Customer.
- (17) **Support Services** means the support services to be provided by RollCall and described in the Services Schedule.
- (18) **Website** means the website at the address [www.rollcall.com.au](http://www.rollcall.com.au) or such other web address as may be specified by RollCall from time to time.

### 2 Orders and Payment

- (1) The Customer agrees to purchase RollCall Services at the prices and on the payment terms set out in the Pricing Schedule.
- (2) RollCall may from time to time make available processes for the Customer to lodge orders, in which case the Customer must comply with those processes.
- (3) If the Customer disputes an invoice for RollCall Services it:
  - (a) must pay the undisputed amount (if any) on the due date of the invoice;
  - (b) may withhold the disputed amount only if that disputed amount is reasonable and RollCall is notified of the dispute prior to the due date of the invoice; and
  - (c) must endeavour to resolve the dispute by negotiation in good faith.

### 3 Hardware

- (1) RollCall makes the Hardware available for use by the Customer as part of the RollCall Services.
- (2) The Hardware remains the property of RollCall at all times and no title or interest in any item of Hardware passes to the Customer at any time, unless RollCall agrees to sell specific items of Hardware to the Customer.

- (3) In the event that RollCall sells Hardware to the Customer, 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.
- (4) Upon the termination of this Agreement for any reason, all Hardware must be promptly returned to RollCall (to an address nominated by RollCall) at the cost of the Customer. If Hardware is not returned to RollCall, the Customer will be liable to pay RollCall \$650.00 for each item of Hardware not returned.
- (5) The Customer will be liable for any damage to the Hardware that is beyond normal wear and tear (as determined by RollCall acting reasonably) and must pay RollCall the reasonable replacement cost set out in the Pricing Schedule for each item that RollCall determines is damaged beyond normal wear and tear.
- (6) The Customer acknowledges and agrees that it will comply with all applicable laws with respect to its use of the Hardware and the RollCall Services, including any laws specifically concerning surveillance devices and vehicle laws.

**4 Licence to the Customer**

- (1) RollCall grants the Customer a non-exclusive, non-transferable and limited licence to use the RollCall Services in accordance with the terms of this Agreement.
- (2) The Customer has no rights, ownership or entitlement in the RollCall Services.
- (3) The Customer must not reverse engineer, disassemble, decompile or otherwise reduce the RollCall Services (including any intellectual property comprising any part of the RollCall Services) into any form.

**5 Access to RollCall Services**

- (1) The Customer is at all times responsible for its own internet connection to access the RollCall Services.
- (2) Access to the RollCall Services is restricted by a login system and may not be accessible without Login Credentials.
- (3) The Customer may register, create and update Login Credentials by

following the applicable processes on the Website.

- (4) The Customer must keep all Login Credentials safe and secure and must not disclose to, or share the Login Credentials with, any third party.
- (5) The Customer must immediately notify RollCall if the Customer becomes aware that any Login Credentials has been compromised.
- (6) The Customer is entirely responsible for any access to the RollCall Services using Login Credentials, and acknowledges and agrees that any access to or use of the RollCall Services by means of Login Credentials is deemed to be access or use by the Customer irrespective of whether or not the Customer in fact accessed or used the RollCall Services. This includes but is not limited to any upload, amendments to or download of Customer Data.
- (7) RollCall may:
  - (a) update, replace or vary any aspect of the RollCall Services (at RollCall's expense) without the prior consent of the Customer, provided that such update, replacement or variation does not materially reduce the functionalities and features of the RollCall Services; or
  - (b) update, replace or vary any aspect of the RollCall Services (at RollCall's expense) and with seven (7) days written notice to the Customer, if that update, replacement or variation materially reduces the functionalities and features of the RollCall Services.

**6 Customer Data**

- (1) RollCall will take reasonable measures to protect Customer Data from being accessed by unauthorised persons and ensure that the RollCall Services are provided, and Customer Data is transmitted and stored, in a secure environment.
- (2) RollCall may only use Customer Data only for legitimate purposes relating to RollCall's performance of this Agreement.
- (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.
- (4) 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 the Customer.

#### 7 Service Interruptions

- (1) RollCall does not guarantee that it can provide continuous or fault free services under this Agreement.
- (2) The Customer acknowledges that the RollCall Services use public wireless telephone networks to transmit data and may not function accurately at all times and all locations due to various issues including but not limited to:
  - (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 RollCall 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.
- (3) RollCall will use reasonable endeavours to ensure that scheduled outage and maintenance of RollCall Services occur outside of the hours of 9:00am – 5:00pm (AEST) on a Business Day.
- (4) RollCall is required to communicate all scheduled RollCall Services outages by giving at least five (5) Business Days notice to the Customer.
- (5) RollCall may limit, interrupt, suspend or alter access to RollCall Services and Support Services as follows with either immediate effect in the case of an emergency (as reasonably determined by RollCall) or otherwise after providing reasonable notice:
  - (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 ten (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.
  - (d) If RollCall has established to its reasonable satisfaction that Customer's Login Credentials have been compromised or disclosed in an unauthorised manner.

- (e) From time to time, RollCall may issue policies, procedures and directions to the Customer for or in connection with the provision of Customer Data to RollCall. The Customer agrees to comply with all such policies, procedures and directions. 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 the Customer failing to comply with all such policies, procedures and directions.
- (6) RollCall must cease any suspension of, and must resume providing, RollCall Services once the event or circumstance giving rise to the suspension right under (5) is remedied or has ceased.

**8 Warranties and disclaimers**

- (1) RollCall warrants that the RollCall 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 will comply with all applicable laws.
- (2) RollCall warrants that it is entitled to use and deal with any intellectual property rights which may be used in connection with the RollCall Services and that the supply of the RollCall Services will not infringe the intellectual property rights of any third party.
- (3) RollCall warrants that RollCall Services will contain the features and functionalities set out in the Services Schedule.
- (4) 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 RollCall Services are error-free or have no defects, or are free from viruses, worms or trojans; and
  - (c) that the RollCall Services meet the Customer's requirements or are compatible with the

Customer's computer systems.

- (5) 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**

- (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) the Customer's use of or reliance on the electronic maps, map displays or suggested milestones that may be made available to the Customer as part of the RollCall Services;
  - (b) any invalid or incorrect Customer Data;
  - (c) any failure, interruption or inaccuracy of the RollCall Services as described in clause 7;
  - (d) a Force Majeure Event (as described in clause 14(4)); or
  - (e) 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 the Customer or any third person.
- (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.
- (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.
- (4) To the extent permitted by law, RollCall's aggregate liability to the Customer under or in connection with this Agreement will 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

- (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.
- (2) The indemnity provided by the Customer is reduced to the extent that the liability is attributable to any negligent or unlawful act or omission of RollCall.

## 11 Privacy

- (1) The Customer acknowledges and agrees that RollCall may collect, use and disclose certain Personal Information to be used for the sole purpose of providing RollCall Services.
- (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.
- (3) Upon reasonable request by the Customer, RollCall will provide the details of its third party technology partners and will update the Customer as they change from time to time.

## 12 Intellectual property rights

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

## 13 Termination

- (1) After the expiration of the Initial Term, either party may terminate this Agreement for convenience at any time by giving at least twenty-one (21) Business Days written notice to the other party.
- (2) RollCall may terminate this Agreement by providing ten (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 ten (10) Business Days of receipt of a written The notification from RollCall.

(3) In addition to the termination rights under paragraphs (1) and (2), a party may immediately terminate this Agreement upon giving notice in writing to the other party if the other party:

- (a) commits a material breach of any of its obligations under this Agreement and does not remedy the breach within ten (10) Business Days of receipt of written notification to do so;
  - (b) is the subject of an Insolvency Event; or
  - (c) commits an act of gross misconduct including fraud, forgery, theft, dishonesty, malfeasance, wilful misconduct or any other act in violation of applicable laws.
- (4) Termination of this Agreement does not prejudice the existing rights and remedies of either party.
- (5) Upon termination of the Agreement for any reason:
- (a) RollCall may suspend or cancel all Login Credentials and the Customer's access to the RollCall 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) the Customer must immediately pay all outstanding fees and charges and invoices; and
  - (d) where the termination occurred as a result of RollCall's default, RollCall must refund any fees or charges relating to a period after the date of termination which have been prepaid by the Customer.
- (6) This Agreement (and applicable charges) will continue to operate on its terms until such time as all Hardware is returned to RollCall and the RollCall Services are no longer being used by the Customer.

## 14 General

- (1) **Agreement** – the Agreement between the parties comprises of these General Terms and Conditions and the Services Schedule and those documents

constitute the entire agreement between the parties in respect of the specific subject matter addressed in those documents.

All representations, communications and prior agreements in relation to

the subject matter are merged in and superseded by this Agreement.

- (2) **Amendment** - This Agreement may only be amended or supplemented in writing signed by the parties.
- (3) **Confidentiality – the** 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, to their respective advisors and otherwise to discharge their obligations under this Agreement.
- (4) **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 data-communication delays, inability to obtain products or supplies, acts of God, computer software error or any substantially similar event. In those circumstances the affected party may delay or suspend the performance of its obligations without any liability to the other party. The affected party must take all reasonable steps to overcome or minimise the effect of the event.
- (5) **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 except in the case of RollCall selling its business in which case this Agreement may be assigned by RollCall providing written notice to the Customer.
- (6) **No waiver** - The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.
- (7) **Unenforceability** - Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or

unenforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

- (8) **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, sent by prepaid post by email or by facsimile. Any change to the addresses of the addressee set out in the Agreement must be notified to the other party within seven (7) days.
- (9) **Governing law** - The law in force in the State of Victoria governs this agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement.
- (10) **Joint parties** - An agreement, covenant, warranty or undertaking by more than one person will be deemed to be made by those persons jointly and each of them severally

