

Commander Rental Equipment Terms and Conditions

All enquiries 132 777

TERMS AND CONDITIONS

These terms and conditions, together with your Rental Form form part of the agreement pursuant to which we will lease the Rental Equipment to you (“Agreement”).

1. DEFINITIONS & INTERPRETATION

Definitions

1.1 In these terms and conditions:

Agreement has the meaning given above.

Ancillary Good has the meaning given to that term in the Telecommunications Act 1997 (Cth).

Ancillary Service has the meaning given to that term in the Telecommunications Act 1997 (Cth).

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Business Information has the meaning given to that term in clause 14.17.

Carriage Service has the meaning given to that term in the Telecommunications Act 1997 (Cth).

Controller has the meaning given to that term in the Corporations Act 2001 (Cth).

Due Date means the date on or before which we must receive the Rental Payment or any other payment from you, as set out in an invoice or bill issued by us.

Early Termination Payment is calculated as follows:

r x n

where:

r = the Rental Payment

n = number of Rental Payments remaining from the termination date until the date of expiry of the Minimum Term

Encumbrance means an interest or power reserved in or over an interest in the Rental Equipment or created or otherwise arising in or over any interest in the Rental Equipment under a mortgage, charge, lien, pledge, bill of sale, trust or power.

Installation Date means the date before which we anticipate that the Rental Equipment will be fully installed, as set out in your Rental Form.

Insurance Policy has the meaning given to that term in clause 6.3.

Intellectual Property includes copyright, designs, trademarks (registered and unregistered), confidential information and patents.

Law means any statute, regulation, ordinance, binding code of conduct, applicable judgement, court orders, binding standards and determinations and directions issued by a regulator.

Minimum Term means the term of this Agreement, as set out in the Rental Form.

National Credit Code means the National Consumer Credit Protection Act 2009 (Cth) and the National Credit Code set out in Schedule 1 to that Act.

Personal Information has the meaning given to that term in the Privacy Act 1988 (Cth).

Personal Property Securities Register means the securities register established and maintained in accordance with Chapter 5 of the Personal Property Securities Act 2009 (Cth).

Receiver has the meaning given to that term in the Corporations Act 2001 (Cth).

Related Body Corporate has the meaning given to that term in the Corporations Act 2001 (Cth).

Rental Form means the application form (in such form as may be determined by us from time to time) which constitutes your application to us for us to lease the Rental Equipment to you.

Rental Equipment means the equipment and software that we lease to you pursuant to this Agreement as initially set out in the Rental Application and expressly includes:

- (a) any equipment provided by us to you as a substitute or replacement for equipment leased to you under this Agreement;
- (b) any additional equipment leased to you under this Agreement;
- (c) any improvements made to the equipment leased to you under this Agreement;
- (d) any manuals, user guides and instructions in respect of the equipment that have been provided to you, irrespective of material form; and
- (e) any accessories, peripherals, hardware and components to the equipment provided to you.

Rental Payment means the amount of money you pay to us each month in consideration of us leasing the Rental Equipment to you, as set out in the Rental Form.

Representatives of a party include the employees, agents, contractors, sub-contractors of that party.

Site means the premises at which the Rental Equipment will be stored and used.

We or **we** means M2 Commander Pty Ltd (ACN 136 950 082).

You or **you** means the person named in the Application Form accepted by us.

Interpretation

1.2 The following rules of interpretation apply unless the context expressly requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and conversely;
- (c) a gender includes the other gender;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning (for example, “we”, “us” and “our” are all references to M2 Commander Pty Ltd);
- (e) a reference to a person includes a natural person,

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partnership, joint venture, government agency, body corporate, an unincorporated body or other entity, and conversely;

- (f) a reference to a clause or a schedule is to a clause or schedule to these terms and conditions;
- (g) a reference to any party to this Agreement includes the parties lawful successors and assigns;
- (h) a reference to a right or obligation of any two or more persons confers that right or imposes that obligation (as the case may be) jointly and severally;
- (i) a reference to currency is a reference to \$AUD unless expressly stated to the contrary;
- (j) a reference to something we believe is a reference to a belief that is subjectively held by us and is not subject to objective scrutiny;
- (k) the word “including” means “including but not limited to”;
- (l) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it; and
- (m) if there is any conflict or inconsistency between these terms and conditions and any other part of the Agreement, these terms and conditions prevail.

2. SCOPE OF AGREEMENT

- 2.1 Your Agreement sets out the terms and conditions on which we will lease the Rental Equipment to you. This Agreement does not govern the supply of any Carriage Services to you or any Ancillary Goods or Ancillary Services. If you acquire any Carriage Services, Ancillary Goods or Ancillary Services from us (e.g. maintenance services), the supply of those Carriage Services, Ancillary Goods or Ancillary Services (as the case may be) are supplied under a separate and independent agreement, comprised of our standard form of agreement made under section 479 of the Telecommunications Act 1997 (Cth).

3. TERM OF AGREEMENT

- 3.1 You agree to lease the Rental Equipment from us for the Minimum Term.
- 3.2 At the expiry of the Minimum Term, this Agreement will continue on a month to month basis:
 - (a) we receive from you a written notice of non-renewal no more than sixty (60) days, and no less than thirty (30) days, before the expiry date of the Minimum Term; and
 - (b) the Rental Equipment is returned to us on or before the expiry date of the Minimum Term.
- 3.3 If this Agreement continues in accordance with clause 3.2, this Agreement will continue to apply until:
 - (a) we receive from you a written notice of termination no more than sixty (60) days and no less than thirty (30) days, prior to your requested date of termination; and
 - (b) the Rental Equipment is returned to us on or before that date.

4. QUALITY OF EQUIPMENT

- 4.1 You acknowledge and agree that the Rental Equipment leased to you may be new or second hand.
- 4.2 We acknowledge that you may be entitled to the benefit of the guarantees set out in the Australian Consumer Law in respect of the Rental Equipment, notwithstanding that the Rental Equipment is not sold to you. Where you are entitled to those guarantees, we will not deny you your rights under those guarantees. Please refer to the Australian Consumer Law to determine whether or not those guarantees apply to you, and if so, the extent of those guarantees.

5. DELIVERY AND INSTALLATION OF EQUIPMENT

Cost of Delivery and Installation

- 5.1 Where we agree to deliver and install the Rental Equipment to your Site, you agree that you are responsible for our delivery and installation costs.
- 5.2 You agree that you must provide us and our Representatives with all reasonable access and assistance that may be required in order to deliver and install the Rental Equipment at the Site.
- 5.3 We will provide you with a quote for the delivery and installation costs. However, you acknowledge and agree that the actual cost of delivery and installation may vary from the initial quotation as a result of a number of factors (e.g. Site inspection) and you are liable to us for that cost. Where reasonably practicable, we will provide you with advance notice of any revisions to the delivery and installation costs initially quoted to you by us.
- 5.4 If we attempt delivery, or arrange for delivery by a delivery contractor, of the Rental Equipment to the Site, you agree that we or our delivery contractor may refuse to part with possession of the Rental Equipment unless you execute an acknowledgement of delivery in a form that is acceptable to us or our delivery contractor (as the case may be).
- 5.5 If delivery and installation of the Rental Equipment is not completed within sixty (60) days of the Installation Date for a reason that is within your reasonable contract, we may terminate this Agreement with immediate effect with notice to you. You agree to pay our reasonable expenses (including delivery, attempted installation, storage and recovery costs).

Risk on Delivery

- 5.6 You acknowledge and agree that you are responsible for any loss or damage to the Rental Equipment upon delivery of that Rental Equipment to the Site.

6. INVOICING AND PAYMENT

Rental and other payments

- 6.1 In consideration of us supplying the Rental Equipment to you, you are required to pay to us the Rental Payment prior to the Due Date.

Invoicing

- 6.2 Our standard invoicing period is monthly but we reserve the right to vary it. We may also bill a part-period (for example, to align your billing period with the first day of each month).

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- 6.3 We do not need to provide an invoice, statement or bill to you but we will endeavour to do so.
- 6.4 We may invoice you for Rental Payments at any time, including even if those Rental Payments relate to your lease of the Rental Equipment at any earlier time.
- 6.5 We will notify you from time to time of the payment methods available in respect of your invoice or bill. We may do so by specifying such payment methods on your invoice or bill.

Late Payment

- 6.6 If you do not pay your invoice prior to the Due Date, you:
- (a) are in breach of this Agreement; and
 - (b) we may, in addition to our other rights available under this Agreement or otherwise at law, charge you:
 - (i) interest at 1.5% per annum - calculated daily;
 - (ii) a reasonable late payment fee; and
 - (iii) any collection fees and expenses that we incur.

7. TITLE

Title in Rental Equipment

- 7.1 The title in the Rental Equipment resides with us or our Related Bodies Corporate at all times. You agree that your possession of the Rental Equipment is as a mere bailee on the terms and conditions of this Agreement.
- 7.2 This Agreement does not confer on you any right or obligation to purchase the Rental Equipment at any time. However, we may agree to sell the Rental Equipment to you on terms that we may mutually agree.

Intellectual Property in Rental Equipment

- 7.3 You acknowledge that Intellectual Property may reside in the Rental Equipment (in particular, in the user guides, manuals and instructions).
- 7.4 You must ensure that you or your Representatives do not do any act which infringes the Intellectual Property of any person.

Risk of Loss and Damage

- 7.5 You are responsible for any loss or damage to, or destruction of, the Rental Equipment that we reasonably consider to have arisen from the date of delivery to the Site until we recover possession of the Rental Equipment, except to the extent that:
- (a) the loss, damage or destruction amounts to a failure by the Rental Equipment to comply with the statutory guarantees in the Australian Consumer Law (provided you are entitled to those guarantees); or
 - (b) the loss, damage or destruction is caused by our negligent or unlawful act or omission (unless our act or omission is in accordance with an instruction or a direction given to us by you or your Representatives).

8. RENTAL EQUIPMENT OBLIGATIONS

What you must do

- 8.1 For so long as we or our Related Bodies Corporate retain

title in the Rental Equipment, you must ensure that:

- (a) the Rental Equipment is maintained in the same condition as it was when it was delivered to you (fair wear and tear excepted);
- (b) the Rental Equipment is only stored and used from the Site;
- (c) all reasonable directions that we provide to you in connection with the storage and use of the Rental Equipment is promptly complied with;
- (d) the Rental Equipment is stored separately to your other equipment and always dealt with in a manner that demonstrates the we or our Related Bodies Corporate (as the case may be) are the owners of the Rental Equipment;
- (e) all reasonable steps are taken to ensure that the Rental Equipment is protected from theft, loss, damage, destruction or unauthorised or unlawful storage or use;
- (f) we are notified immediately if the Rental Equipment is stolen, lost, damaged or destroyed, or has been involved in unauthorised or unlawful storage or use;
- (g) you provide us with certificates of currency in respect of the Equipment Insurance and the Public Liability Insurance promptly on our request;
- (h) the Rental Equipment is, at your own cost, serviced and maintained at regular intervals by a person who is duly qualified, skilled and experienced to service and maintain the Rental Equipment;
- (i) all replacement parts used in the service or maintenance of the Rental Equipment are of high quality and are genuine manufacturer replacement parts;
- (j) any fault, damage, defect or poor or inadequate performance in respect of the Rental Equipment is promptly remedied;
- (k) we are provided with all required access to the Rental Equipment to enable us to inspect or test the Rental Equipment;
- (l) we are notified promptly if any person asserts a claim to the Rental Equipment;

- 8.2 You must comply with, and you must ensure that your Representatives with all:

- (a) applicable Laws in connection with the storage and use of the Rental Equipment; and
- (b) relevant manufacturer or developer instructions or guidance in connection with the storage and use of the Rental Equipment.

- 8.3 You:

- (a) must, at your sole cost and expense, take out, and until we recover the Rental Equipment maintain:
 - (i) a public risk liability insurance with an insured amount of at least \$20,000,000 in connection with use or storage of the Rental Equipment or any death, disability or injury that may be

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suffered or sustained in connection with the Rental Equipment; and

- (ii) a personal property insurance policy with an insured amount of at least the full replacement value of the Rental Equipment,

where each such insurance policy:

- (iii) is taken out from, and maintained with, a reputable and solvent insurer that has its registered office in Australia;
- (iv) notes our rights and interests; and
- (v) irrevocably authorises us to receive all monies payable under the insurance policy,

("Insurance Policy").

- (b) must punctually pay all premiums on each Insurance Policy and ensure that no act is done to prejudice the applicability of any Insurance Policy;
- (c) must provide to us, upon our request, a certificate of currency in respect of each Insurance Policy;
- (d) irrevocably appoint us as your duly authorised and lawful attorney to:
 - (i) make, recover and/or compromise in your name any claim under each Insurance Policy or against any person; and
 - (ii) appropriate any insurance money or other amount received at our option towards the repair or replacement of the Rental Equipment or towards any money payable by you to us or by you or us to any third party.

What you must not do

- 8.4 For so long as we or our Related Bodies Corporate retain title in the Rental Equipment, you must ensure that:
- (a) no improvement, modification or alteration is made to the Rental Equipment without our prior written approval;
 - (b) no Encumbrance is granted over the Rental Equipment and that no agreement, arrangement or understanding is entered into for the purpose of, or with the effect of, granting an Encumbrance over the Rental Equipment;
 - (c) the Rental Equipment is not disassembled, decompiled, reverse engineered, modified or reproduced;
 - (d) the Rental Equipment is not sold, assigned, transferred or otherwise disposed of and that no attempt is made to do so;
 - (e) no act is done that has the effect, or may have the effect, of making the Rental Equipment a fixture or fitting at the Site;
 - (f) any insignia, mark, number, word or serial on the Rental Equipment is not defaced, obscured, removed, altered, covered, disguised or erased; and
 - (g) treat or otherwise deal with the Rental Equipment in a manner that is inconsistent with our ownership rights or the ownership rights of our Related Bodies Corporate (as the case may be).

9. TERMINATION

When we may terminate this Agreement

- 9.1 We may terminate this Agreement with immediate effect by written notice to you if:
- (a) you breach any term of this Agreement that is capable of remedy and you fail to remedy that breach to our satisfaction within seven (7) days of our notice to you to do so; or
 - (b) you breach a material term of this Agreement or a term of this Agreement that is not capable of remedy; or
 - (c) you fail to pay us any monies which are owing to us within the time limited by us for the payment of those monies; or
 - (d) you become insolvent under administration; or
 - (e) a Controller is appointed; or
 - (f) you are in liquidation, provisional liquidation, under administration, wound up (or in the process of being wound up or a Receiver has been appointed to any part of your property); or
 - (g) you are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or
 - (h) you commit any act of bankruptcy or any person takes any step towards commencing bankruptcy proceedings; or
 - (i) you are the subject of an event described in section 459C(2) or section 585 of the Corporations Act 2001 (Cth) (or you make a statement from which we reasonably deduce that you are so subject); or
 - (j) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with you, which is preparatory to or could result in the occurrence of an event of the kind set out in clauses 7.1(d) to (i); or
 - (k) you die, become subject to any law regarding mental health or are imprisoned; or
 - (l) you are refused, or you fail to take out, for any reason any Insurance Policy or an Insurance Policy is not in place at any time required by this Agreement; or
 - (m) the Rental Equipment is not stored at the Site, or is moved to any other site without our express written consent; or
 - (n) we determine in our reasonable opinion that there is a serious risk of loss, damage or destruction to the Rental Equipment or that there is a not insignificant risk of death, injury or disability as a result of the storage or use (including misuse) of the Rental Equipment; or
 - (o) the Rental Equipment is lost, damaged or destroyed in circumstances where you are liable for that loss, damage or destruction under this Agreement.
- 9.2 We may terminate this Agreement for any reason on ninety (90) days notice after the expiry of the Minimum Term.

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When you may terminate this Agreement

9.3 You may terminate this Agreement with immediate effect by written notice to us if:

- (a) we breach any term of this Agreement that is capable of remedy and we fail to remedy that breach within thirty (30) days of your notice to us to do so; or
- (b) we breach a material term of this Agreement or a term of this Agreement that is not capable of remedy; or
- (c) we or our Related Bodies Corporate (as the case may be) cease to be the owner of the Rental Equipment; or
- (d) the Rental Equipment is substantially damaged (such that it is not capable of operating to an acceptable standard) or is destroyed, provided that you are not liable for that damage or destruction under this Agreement.

9.4 For the avoidance of doubt, you may terminate this Agreement in accordance with clause 3.3.

9.5 For the avoidance of doubt, nothing in this Agreement derogates from your right to rescind or terminate this Agreement in accordance with your rights (if applicable) under the Australian Consumer Law.

Consequences of Termination

9.6 If this Agreement terminates for any reason or is not renewed, you must:

- (a) return the Rental Equipment to us or ensure that we or our Representatives are provided with all access required to recover the Rental Equipment; and
- (b) pay to us all amounts owing to us within seven (7) days of termination.

9.7 At the commencement date of this Agreement, in consideration of our supply of the Rental Equipment to you, you irrevocably authorise us to enter any premises (whether or not the Site) in which the Rental Equipment is located to remove the Rental Equipment if you do not comply with your obligations under clause 9.6(a), exercisable only on and from the termination or non-renewal of this Agreement. We may act on this authorisation if you fail to comply with clause 9.6(a) within two (2) days of the date of termination or non-renewal of this Agreement.

9.8 Without limiting your obligations under clause 9.6, if this Agreement is terminated prior to the expiry of the Minimum Term (except where the termination was as a result of you exercising a termination right under this Agreement or under the Australian Consumer Law), you must pay to us the Early Termination Fee. You acknowledge and agree that the Early Termination Payment is our genuine pre-estimate of our loss and damage resulting from the premature termination of this Agreement and the onus is on you to prove otherwise.

9.9 No later than the date of termination or non-renewal, the Rental Equipment must be returned to us complete, in the same condition as it was in when it was delivered to you (fair wear and tear excepted).

9.10 Termination or non-renewal does not affect any right or

obligation that arose prior to the date of termination or non-renewal.

10. INDEMNITY

10.1 You must indemnify us and our Related Bodies Corporate, and forever keep us indemnified, from and against any loss, claim, expense, damage, cost (including legal costs on a solicitor/client basis), penalty or liability suffered or incurred by us or our Related Bodies Corporate, arising out of or in connection with:

- (a) a breach of this Agreement by you;
- (b) any loss of, or damage or destruction to, the Rental Equipment between the date of delivery of the Rental Equipment and our recovery of the Rental Equipment, including any repair to or replacement of the Rental Equipment (except to the extent that you are not liable for the loss, damage or destruction under this Agreement or under the Australian Consumer Law);
- (c) your refusal or failure to return, or allow us to recover, the Rental Equipment (except to the extent that you are not liable for such refusal or failure under this Agreement or under the Australian Consumer Law);
- (d) any death of, or disability or injury to, suffered or sustained by any person in connection with your storage or use of the Rental Equipment (except to the extent that you are not liable for the death, disability or injury under this Agreement or under the Australian Consumer Law);
- (e) our recovery, or attempted recovery, of the Rental Equipment following the termination or non-renewal of this Agreement (except where termination was as a result of you exercising a termination right under this Agreement or under the Australian Consumer Law); and
- (f) a breach of any warranty provided by you under this Agreement or any warranty being false, incorrect or misleading for any reason.

10.2 Your liability under the indemnity in clause 10.1 is reduced to the extent that we are able to recover monies in satisfaction of the loss, claim, damage, cost, penalty or liability suffered or incurred under an Insurance Policy.

10.3 In respect of the indemnities given in clause 10 in favour of a person who is not a party to this Agreement, we accept and hold each indemnity on trust for each such person and the indemnities are intended to be, and are, directly enforceable by each such person.

11. OUR LIABILITY TO YOU

If the Australian Consumer Law applies

11.1 If the statutory guarantees provided in the Australian Consumer Law apply to you and we are unable to limit our liability to you, then we do not exclude or limit our liability to you in respect of a failure of the Rental Equipment to comply with the applicable statutory guarantees in the Australian Consumer Law.

11.2 If the statutory guarantees provided in the Australian Consumer Law apply to you and we are able to limit our liability to you, then we limit our liability to you to:

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- (a) the replacement of the Rental Equipment or the supply of equivalent Rental Equipment for the balance of the term of this Agreement; or
- (b) the repair of the Rental Equipment; or
- (c) the cost of replacing the Rental Equipment or obtaining equivalent Rental Equipment; or
- (d) the payment of having the Rental Equipment repaired.

If the Australian Consumer Law does not apply

11.3 In all circumstances other than as set out in clauses 11.1 and 11.2, we exclude all representations, warranties, guarantees, conditions or undertakings that are implied into this Agreement to the maximum extent permitted by law.

11.4 We do not warrant or make any representations as to the performance, reliability or suitability of the Rental Equipment or that the Rental Equipment will operate free from faults, errors or interruption.

11.5 We are never liable to you for:

- (a) economic loss;
- (b) business interruption;
- (c) loss of revenue, profits, actual or potential business opportunities;
- (d) anticipated savings;
- (e) loss of profits;
- (f) loss of data;
- (g) indirect or consequential losses;
- (h) specific or special losses;
- (i) an act or omission of a party for whom we are not responsible for at law;
- (j) any losses outside our reasonable control; and
- (k) a failure by us to supply the Rental Equipment for a reason excluding our unlawful act or negligence;

11.6 Our maximum aggregate liability to you under, or arising out of, or in connection with, this Agreement is limited to the aggregate Rental Payments paid to us during the first three (3) months of your Minimum Term.

Our Liability Generally

11.7 You acknowledge that in supplying the Rental Equipment, we act as a mere lessor of the Rental Equipment and we are not aware of all the relevant details relating to each and every use or anticipated use that you will make of the Rental Equipment. Accordingly, you warrant to us that you will:

- (a) obtain independent operational and technical advice in respect of the suitability of the Rental Equipment for the purpose for which you require the Rental Equipment;
- (b) rely on your own skill or judgement, or the skill or judgement of your independent operational and technical advisors; and
- (c) not rely on our skill or judgement or that if you do rely on our apparent skill or judgement, you understand

that it is not reasonable for you to do so.

11.8 Clause 11.7 only applies to the maximum extent permitted by law and does not apply to the extent that we have made any representations in respect of the Rental Equipment that were false, misleading or deceptive.

12. APPLICATION OF THE NATIONAL CREDIT CODE

12.1 The parties agree that the National Credit Code is not intended to apply to this Agreement as:

- (a) you are not a natural person or a strata corporation; or
- (b) if you are a natural person or a strata corporation, you warrant to us the Rental Equipment is leased wholly or predominantly for business use (i.e. use that is not personal, domestic or household in nature).

13. PERSONAL PROPERTIES SECURITIES ACT

13.1 If the bailment of the Rental Equipment to you constitutes a security interest for the purposes of the Personal Property Securities Act 2009 (Cth), you agree that we or our Related Body Corporate (as the case may be) may:

- (a) perfect its security interest by registering its interest in the Personal Property Securities Register; and
- (b) this clause will constitute a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth).

13.2 If we or our Related Bodies Corporate (as the case may be) incur any costs, fees or charges in connection with registering our interest in the Rental Equipment, you agree that you must indemnify us from and against those costs, fees or charges.

14. GENERAL

Assignment

14.1 You must not transfer, assign, sell, license, novate or otherwise dispose of any of your rights or obligations under this Agreement (or attempt to do so).

14.2 We may transfer, assign, sell, license, novate or otherwise dispose of any of our rights and obligations under this Agreement.

Duties

14.3 If we become liable to pay any stamp duty or other taxes arising out of this Agreement, you agree that you must indemnify us from and against those duties and taxes.

Variation

14.4 We may vary this Agreement from time to time (including the Rental Payments) on at least seven (7) days notice to you.

Waiver

14.5 The failure, delay, relaxation or indulgence on the part of a party in exercising any right or remedy conferred upon that party by this Agreement shall not operate as a waiver of that power, right or remedy, nor shall the exercise, or any single or partial exercise, of any power, right or remedy preclude any other or future exercise of such power, right, remedy or the exercise of any other power, right or remedy under this Agreement.

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14.6 Any waiver of a power, right or remedy under this Agreement shall be in writing and signed by the party granting the waiver and shall be effective only to the extent specifically set out in that waiver.

Entire Agreement

14.7 This Agreement is the entire agreement between the parties about its subject matter; and supersedes any prior arrangement, agreement or understanding between the parties in respect of the subject matter hereof.

Severance

14.8 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid in a jurisdiction, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid in a jurisdiction, that clause or part is to be treated as removed from this Agreement for the purposes of that jurisdiction and the rest of this Agreement is not affected.

Governing Law

14.9 This Agreement is governed by, and construed in accordance with, the laws of the state of Victoria and the parties irrevocably submit to the exclusive jurisdiction of the courts exercising jurisdiction in the state of Victoria and the courts competent to determine appeals from those courts.

Remedies Cumulative

14.10 The rights, powers, obligations and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law or in equity independently of this Agreement.

Survival of Rights

14.11 The termination or non-renewal of this Agreement does not affect any rights and obligations in this Agreement that:

- (a) are in connection with any indemnity granted in this Agreement;
- (b) are in connection with any limitation of liability in this Agreement;
- (c) arise upon the termination or non-renewal of this Agreement; and
- (d) by their nature, survive the termination or non-renewal of this Agreement.

Notices

14.12 Subject to clause 14.13, a notice or other communication required or permitted to be given to a party must be in writing and:

- (a) delivered personally; or
- (b) sent by prepaid mail or document exchange; or
- (c) sent by facsimile transmission; or
- (d) sent by email.

14.13 Notice may not be given to us by email. If notice is provided to us, or attempted to be provided to us, by email, we will not be deemed to have received that notice unless we expressly confirm receipt to you in writing.

14.14 A notice of other communication shall be deemed to have been given when:

- (a) personally delivered, upon delivery; or
- (b) in the case of a posted letter or letter delivered by document exchange within Australia, on the second day after being posted; or
- (c) in the case of a posted letter or letter delivered by document exchange outside of Australia, on the seventh day after being posted; or
- (d) in the case of facsimile communication, when the sender's facsimile machine confirms successful transmission; or
- (e) in the case of email, immediately, unless a delivery failure notice is received by the sender's email server.

Privacy

14.15 You agree that we may provide certain information about you to a credit reporting agency to obtain a credit report about you. The information which may be given is covered by the s18E(1) of the Privacy Act 1988 (Cth) and includes identity particulars and the fact that you are entering this Agreement.

14.16 You agree that we may seek and obtain information about you from a credit reporting agency or another credit provider and give information about you to another credit provider. This may include anything about credit worthiness, history standing or capacity, including information about commercial credit, which credit providers are permitted by the Privacy Act 1988 (Cth) to obtain or receive.

14.17 If you are a natural person, we may collect Personal Information about you including but not limited to your electronic contact details such as email. If you are a business customer we may collect information about your business including but not limited to your electronic contact details such as email ("Business Information"). You acknowledge and agree that we may use your Personal Information or Business Information to send commercial electronic messages, as defined under the Spam Act 2003 (Cth). You are entitled to 'opt out' from receiving any such commercial electronic messages.

14.18 You agree that we may use and disclose your Personal Information or Business Information for the following purposes:

- (a) to provide information to you about goods or services which we or any other person may offer to you;
- (b) to provide information to any other person so that they may provide information to you about goods and services they offer;
- (c) to send commercial electronic messages (as defined in the Spam Act 2003 (Cth)); and
- (d) for billing, administration and customer information purposes.

14.19 Information concerning our policies with respect to Personal Information is contained in our privacy policy as current from time to time which is available on request or on our website at <http://www.commander.com>.