

BLACK BOX CONTROL

General Terms and Conditions of Sale

April 2016

- 1. Definitions.** "Black Box Control" means Black Box Control Pty Ltd (ABN 84102559955); "Goods" means the intellectual property of Black Box Control and any associated software, hardware and equipment and support services associated with the Goods and Services ordered by the Customer; "**PPSA**" means the *Personal Property Securities Act 2009 (Cth)* and any regulations made *pursuant to it*; "**PPSR**" means the Personal Property Securities Register established pursuant to the PPSA; "Rate" means the rate or charges for Goods or Services as set out in the Service Order Form or as contained on the Black Box Control website (www.blackboxcontrol.com.au) or as advised to the Customer by Black Box Control in writing and as amended by Black Box Control from time to time in accordance with these terms and conditions; "Recurring Charges" means rates and charges for Goods and Services that are provided on a recurring basis; "Services" means any and all services offered by Black Box Control including those in connection with the Goods;" "Service Order Form" means a standard form created by Black Box Control and as amended by Black Box Control from time to time and which is to be used by the Customer for the purpose of ordering Goods or Services from Black Box Control and includes any other document which provides substantially the same information required by the Service Order Form and includes any pricing schedule to the form; "**Customer**" means the person or entity and its assigns and successors or any person acting with apparent authority for it that is to receive the Goods and Services from Black Box Control.
- 2. Extent of Terms.** These terms and Conditions apply to the sale of Goods and Services by Black Box Control to the Customer.
- 3. Acceptance.** The following shall constitute acceptance by the Customer of the terms and conditions herein: the Customer making full or part payment for all or some of Goods or Services supplied to it by Black Box Control; the Customer providing instructions in relation to the supply of Goods or Services including by completion or partial completion of the Service Order Form; the Customer giving verbal or written agreement to receive the supply of Goods or Services from Black Box Control.
- 4. Supply of Goods and Services.** Black Box Control may, in its sole discretion, choose to supply Goods and Services to the Customer. If the Customer seeks to receive Goods and Services from Black Box Control, it shall first complete and provide to Black Box Control a Service Order Form detailing the required Goods and Services and Black Box Control may, in its sole discretion, choose to supply the requested Goods and Services to the Customer in accordance with the timeframe and any additional terms and conditions outlined on the Service Order Form.
- 5. Payment Terms and Interest.** Black Box Control shall invoice the Customer at the Rate for Goods and Services supplied. Payment of 50% of hardware costs (or costs are indicated in the Service Order Form) are required to be paid before the installation and access of inControl. The installation will be invoiced once the install has taken place along with the 50% amount owing on hardware. The customer will be charged one month prior

BBX_TL_Sa015

for all monthly fees and costs with a 30 day term. Unless otherwise specified on a Service Order Form, Black Box Control will invoice the Customer for Recurring Charges for Goods and Services on a monthly basis and in advance (prior to the month in which the services are to be provided) and the Customer must pay the total amount of the invoice for Recurring Charges before the last day of the month in which the invoice was rendered to the Customer by Black Box Control. All rates and charges that are not Recurring Charges, including, but not limited to customer hardware and installation charges must be paid in full by the Customer immediately upon completion of the supply of the Goods or Service. All other amounts stated on an invoice from Black Box Control to the Customer, unless dealt with already by this clause, are due and payable within thirty (30) days from the date of the invoice on which they are recorded. The Customer agrees to remit payment to Black Box Control at the remittance address provided on the invoice. In the event that payment is not received in full from the Customer on or before the date required for payment of the invoice in accordance with this term or such other date as agreed by Black Box Control and the Customer in writing, Black Box Control shall have the right, after giving the Customer twenty-four (24) hours' notice, to suspend either temporarily or permanently, all or any portion of Goods or Services currently supplied or to be supplied by Black Box Control to the Customer. In the event that payment is not received in full from the Customer on or before the date required for payment of the invoice in accordance with this term or such other date as agreed by Black Box Control and the Customer in writing, the Customer shall be liable to Black Box Control for penalty interest calculated on a daily basis at 6% per annum on any outstanding amount which is to accrue from the date upon which the amount becomes due and payable in accordance with these terms and conditions until the date upon which the amount and all accrued interest is received as cleared funds by Black Box Control.

6. **Disputes.** If the Customer disputes any part or portion of an invoice rendered by Black Box Control in accordance with these terms and conditions or the provision of any Goods and Services, it must pay the undisputed amount of the invoice on or before the date upon which the amount becomes due and payable and it must provide written notice and documentation to Black Box Control of the dispute as soon as practicable and within fourteen (14) days of the date upon which the amount disputed became due and payable. At the expiry of the fourteen (14) day period, the Customer will be deemed to have given due consideration to the invoice and accepted its liability for the amounts recorded on the invoice. The Customer and Black Box Control will make a good faith effort to resolve billing disputes as expeditiously as possible and will make a good faith effort to negotiate a commercial resolution to the dispute prior to exercising any rights or remedies they have against the other at common law or in statute.
7. **Responsibility for Fraudulent Usage.** The Customer shall be solely and exclusively responsible for the use and control of its access to Black Box Control facilities and for all usage attributable to the Customer's account with Black Box Control including unauthorised or fraudulent usage. The Customer acknowledges that in circumstances where Goods and Services have been supplied by Black Box Control to the Customer or on account of the Customer by reason of fraudulent conduct or usage, the Customer shall not be relieved from its obligation to make timely and full payment to Black Box Control for the Goods and Services.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Western Australia.
9. **Severability.** If any whole or part of any of these terms and conditions is deemed invalid, void, unlawful or unenforceable, the validity, existence, legality and enforceability of the remaining terms and conditions shall not be affected, prejudiced or impaired.
10. **Restoration of Services.** Black Box Control shall use commercially reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents or errors in the Services it provides to the Customer and in order to restore the Services provided the Customer has paid for all Good and Services supplied.
11. **Warranty.** Black Box Control warrants that the Goods and Services provided by it to the Customer are free from defects and defaults and are fit for the purpose for which they are intended at the time of first supply to the Customer and any future or altered supply may alter the warranty. The standard included warranty period is 12 months from date of purchase. Extended warranty may be purchased at an additional cost.
12. **Limitation of Liability.** Black Box Control's liability for Goods supplied to the Customer is limited to making good any defects or at Black Box Control's option by replacement as soon as practicable and such liability is only enforceable by the Customer where the defects have arisen solely from faulty materials or manufacturing and the Goods have not received maltreatment, inattention, incorrect use or interference after receipt by the Customer and the defective Goods are promptly returned at the Customer's cost to Black Box Control. Black Box Control's liability for breach of a condition or warranty implied by the *Competition and Consumer Act 2010* is limited to: (i) in the case of Goods, the replacement of the goods, supply of equivalent goods, repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods or having the goods repaired; or (ii) in the case of services, the supplying of the services again or payment of the cost of having the services supplied again. The Customer uses at its own risk the Goods and Services supplied by Black Box Control and releases and indemnifies Black Box Control against any loss or damage suffered by the Customer by reason of its use or receipt of the Goods and Services supplied to it by Black Box Control and the Customer releases and fully indemnifies Black Box Control against any loss or damage whatsoever or howsoever suffered by any other person or entity (including without limitation death or personal injury or loss of business or profits) who has access to or use of or reliance on the Goods and Services through or by the Customer including any person or entity who is reliant on the Customers use of the Goods and Services.
13. **Force Majeure.** The Customer shall not have any claim or right against Black Box Control for any failure of Black Box Control to supply Goods or Services to the Customer where such failure is by reason of a cause that is beyond the control of Black Box Control, including but not limited to: power or telecommunications outages, unavailability of essential services required for the provision of the Goods and Services including satellites and global positioning systems, inclement weather including sunspots, acts of God, fire, flood or other catastrophes; any law, order regulation, direction, action or request of the Australian Government, or of any other government, including state and local

governments having or claiming jurisdiction over Service Provider or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots; wars; fibre-cuts or strikes, lock-outs, work stoppages, or other labour difficulties.

14. **Confidentiality.** Except for the purposes of obtaining legal or accounting advice regarding these terms and conditions or for compliance with legal obligations or for enforcing these terms and conditions, the Customer must keep confidential any and all documentation and information received by the Customer by reason of its commercial relationship with Black Box Control and the supply of Goods and Services to it in accordance with these terms and conditions. A breach of this term shall entitle Black Box Control to, in addition to any other rights and remedies it may have at law or in equity, immediately discontinue its supply of Goods and Services to the customer without further obligation or liability to the Customer. These obligations of the Customer shall survive termination of the supply of Goods and Services by Black Box Control to the Customer in accordance with these terms and conditions.

15. **Unauthorised Access, Resale and Use.** The Customer is responsible for protecting all account passwords and for any authorised or unauthorised use made of any account it has with Black Box Control. The Customer must comply with the rules appropriate to any network to which the Customer may gain access via the Goods or Services supplied by Black Box Control. The Customer acknowledges and accepts that there are risks associated with transmitting or making available any proprietary, confidential, or otherwise valuable information that the Customer desires to keep confidential over any part of the Internet without encryption, nor reside without firewall protection on computers connected to the Internet and indemnifies Black Box Control against any loss it suffers in this regard. The Customer must not transmit or make available to the Internet any material that is illegal, libellous, tortuous, or likely to result in any action against the Customer or Black Box Control or its Customers and indemnifies Black Box Control for any loss suffered by Black Box Control and against any claim arising against Black Box Control by reason of the Customer's failure to comply with this term. Black Box Control may in its sole discretion suspend, either temporarily or permanently, the Customer's Services in the event of any attack against the Customer that affects Black Box Control's network or its Customers. The Customer must not use Black Box Control's Goods or Services for any purpose other than what it is intended for and indemnifies Black Box Control against any loss suffered by Black Box Control by reason of the Customer's misuse of Goods or Services. In the event of misuse of Goods or Services by the Customer, Black Box Control may in its sole discretion suspend, either temporarily or permanently, all or any portion of the Goods or Services currently supplied or to be supplied by Black Box Control to the Customer. The Customer must not resell or onsell or assign any of the Goods and Services supplied to it by Black Box Control unless it has received written consent from Black Box Control. Unless the Customer has engaged Black Box Control to supply installation, testing and operation Services for Goods and Services supplied by Black Box Control to the Customer, the Customer will be solely responsible for the installation, testing and operation of the Goods and Services and in such circumstances, the Customer will be responsible for any costs, loss or damage caused to the Goods or Services by reason of the Customer's inadequate, faulty or failed

installation, testing and operation.

16. **Title to Equipment.** Where Goods are leased by Black Box Control to the Customer, these terms and conditions shall not be deemed to convey to the Customer title of any kind to any of the leased Goods (including, but not limited to, recorders, antennas, mobile data terminals, enhancements or any other additions/accessories leased by Black Box Control to Customer). Where Goods have been sold by Black Box Control to the Customer, title and interest in the Goods shall remain with Black Box Control until such time as Black Box Control has received payment in full for the particular Goods.
17. **Service Plans and Term Commitment.** Monthly minimum charge commitments and commitment times for Goods or Service usage shall be recorded on the Service Order Form and shall be in effect for the length of the term recorded on the Service Order Form. The Customer will be liable to Black Box Control for any excess data over the usage allowance for Goods or Services. In the event that the Customer terminates the supply of any Goods or Services that it has requested or ordered from Black Box Control, the Customer shall be liable to Black Box Control for any and all costs incurred by Black Box Control in the ordering and implementation of the Goods or Services even where the Goods or Services have not been received by the Customer or installed and for any cancellation fees or other costs and fees that Black Box Control owes to a third party by reason of the cancellation of the Goods or Services, including any ongoing monthly fees that are owed to a third party for the Goods or Services. In the event that the Goods or Services are to be supplied to the Customer by Black Box Control for a term as recorded on the Service Order Form and in the event that the Customer cancels these Goods or Services prior to the completion date of the term, the Customer shall be liable to Black Box Control for the Rates, including the regular monthly fees and the fee for the monthly minimum usage commitment times and the minimum charge commitments, for the Goods or Services for the remainder of the term as recorded in the Service Order Form. Cancellation requests must be sent in writing directly to Black Box Control's office. Upon expiration of any term commitment for Goods and Services as recorded in the Customer's Service Order Form, the Goods and Services will be provided on a month to month basis at the same Rates, including the monthly minimum charge commitments and commitment times, and these terms and conditions shall apply to the supply of those Goods and Services unless Black Box Control in its sole discretion determines otherwise, or unless written notice for termination of the Goods and Services is provided by the Customer to Black Box Control's registered office and in such circumstances the supply of those Goods and Services will terminate 30 days after receipt of the written notice.
18. **Suspension of use.** Should the Customer wish to suspend access to one (1) or more inControl software the Customer must express this in writing by email. Customers may suspend access for 4 week blocks, with initially suspension incurring a fee of \$27 ex. G.S.T per unit. This fee will cover a period of up to 12 weeks suspension, with each 12 week block suspension will incur a fee of \$27 ex. G.S.T. A reconnection fee for each unit will be \$22 ex G.S.T. If a Customer is having difficulty with payments, the Customer is able to discuss alternative payment agreements with BlackBox control. Should the customer require a long term suspension due to specific conditions the Customer is able to negotiate this will BlackBox Control based on strict criteria.

19. **Rates.** Black Box Control may in its sole discretion revise the Rates initially recorded in the Service Order Form for Goods and Services or recorded on Black Box Control's website at www.blackboxcontrol.com.au or as advised by Black Box Control to the Customer in writing by providing five (5) days written notice to Customer and from the expiry of this time the amended Rates shall be applicable from that point on to any arrangement that the Customer has with Black Box Control for the supply of Goods and Services. For the purpose of this term only, notice to the Customer will be satisfied by the posting of the revised Rates on Black Box Control's website at www.blackboxcontrol.com.au Rates for any Goods or Services that are not recorded in the Customer's Service Order Form shall be billed by Black Box Control at the Rate from time to time recorded on Black Box Control's said website.
20. **Miscellaneous.** Any notice to be given by one party to the other shall be given in writing and shall be properly served if sent by pre-paid first class mail, overnight courier or facsimile to the registered office or last known business address of the party to be served and if such notice is sent by mail it shall be deemed to have been received on the second business day after mailing and if sent by facsimile shall be deemed to have been received at the time of dispatch. Where Customer comprises two or more persons their liabilities and obligations to Black Box Control shall be joint and several. The headings of the preceding clauses shall not affect the interpretation of these terms and conditions. The singular shall include the plural and vice versa.
21. **Indemnity.** The Customer indemnifies Black Box Control against any loss or damage suffered by Black Box Control by reason of the Customer failing to comply with any part or the whole of these terms and conditions. The Customer is liable to Black Box Control for any and all costs incurred by Black Box Control in enforcing or attempting to enforce these terms and conditions including by way of Court proceedings and including actual legal fees and disbursements on an indemnity basis.
22. **Personal Property Securities Register.** These terms and conditions constitute a security agreement in accordance with the PPSA which creates a security interest in favour of Black Box Control in all Goods previously supplied and all after acquired Goods supplied by Black Box Control to the Customer and is for the purpose of securing the Customer's payment obligations to Black Box Control from time to time. The Customer irrevocably and unconditionally grants to Black Box Control a "Purchase Money Security Interest" in accordance with the PPSA. The Customer must not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of Black Box Control. The Customer must, upon the request of Black Box Control, sign any further documents and/or provide any further information which Black Box Control may reasonably require to enable registration of a financing statement or financing change statement on the PPSR and must give Black Box Control free and immediate access to its premises or places within its control to enable Black Box Control to enforce its Security Interests. The Customer's rights under sections 115 of the PPSA upon enforcement are unconditionally and irrevocably waived. The Customer is liable to Black Box Control for all costs incurred by Black Box Control in enforcing or attempting to enforce the security interest created by these terms and conditions and for any costs incurred by Black Box Control (including actual legal fees and disbursements on a solicitor

and client basis) in obtaining an order pursuant to section 182 of the PPSA. Pursuant to section 157 of the PPSA, the Customer's right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interests is irrevocably and unconditionally waived.

23. **Survival.** These terms and conditions survive the termination or cancelation of the supply of Goods or Services by Black Box Control to the Customer