

Supply and Distribution Agreement

Parties:

Bird Control Systems	Name: Bird Control Systems Pty Ltd	ACN: 664 098 113
	Address: Suite 618, Level 6/530 Little Collins St, Melbourne VIC 3000, Australia	
	Email Address: Sales@birdcontrolgroup.com	
Reseller	Name:	ABN:
	Address:	
	Email Address:	

Key Agreement Details:

Initial Term	24 months
Territory	
Fulfilment Regions	•
Special Conditions	

Background:

- A. **(Bird Control Systems Business)** Bird Control Systems carries on the business of supplying goods, including the Supply Goods.
- B. **(Entry into agreement)** Bird Control Systems has agreed to supply the Supply Goods to the Reseller and the Reseller has agreed to buy them and market, distribute and sell the Supply Goods and the Services in accordance with this agreement.
- C. **(Agreement)** This agreement sets out the rights and obligations of both parties, including:
- (a) such restrictions on who the Reseller may market and distribute the Supply Goods to;
 - (b) requiring the Reseller to have in place particular insurance to cover their obligations under this agreement and their responsibilities as a seller of the Supply Goods and Services;
 - (c) such terms relating to how the Reseller may place an Order for the Supply Goods and how Bird Control Systems will deliver them;
 - (d) the costs associated with the provision of the Supply Goods, including the different tax and charges applicable as dependent on whether the Reseller is in a Fulfillment Region; and
 - (e) each parties rights and obligations in handling faulty Supply Goods.

By signing below, the parties agree to the terms and conditions, the attached schedules and any Order agreed between the parties (together the **agreement**).

Executed as an agreement on _____.

Signed for and on behalf of Bird Control Systems)
Pty Ltd ACN 664 098 113 by a duly Authorised)
Person:)

Signature of Authorised Person

Full Name of Authorised Person

Date

I

EXECUTED by **ACN**)
in accordance with section 127 of the)
Corporations Act 2001 (Cth))
)

Signature of Director

Signature of Director / Secretary

Full Name of Director

Full Name of Director / Secretary

Date

Date

Terms and Conditions

1 HOW TO READ THIS AGREEMENT

1.1 MEANING OF CAPITALISED WORDS AND PHRASES

Capitalised words and phrases used in these terms and conditions have the meaning given:

- (a) to that word or phrase in the Key Agreement Details;
- (b) by the words immediately preceding any bolded and bracketed word(s) or phrase(s); or
- (c) in the definitions in clause 17 of these terms and conditions.

1.2 ORDER OF PRECEDENCE

- (a) Subject to clause 1.2(b) and unless otherwise expressly stated, in the event of any inconsistency between these terms and conditions and an Order or Key Agreement Details, these terms and conditions will prevail to the extent of such inconsistency.
- (b) Any Special Conditions set out in the Key Agreement Details are incorporated in these terms and conditions and will replace and prevail over any other terms to the extent of any inconsistency.

2 SUPPLY

Bird Control Systems agrees to supply, and the Reseller agrees to buy, the Supply Goods in accordance with the terms of this agreement.

3 TERM

- (a) This agreement commences on the Commencement Date and will continue for the Initial Term and any Renewal Term applicable per clause (b)3(b), unless terminated earlier in accordance with clause 13 (the **Term**).
- (b) Subject to clause 3(d), upon expiration of the Initial Term, this agreement will automatically renew on an ongoing basis for a period equal to the Initial Term (**Renewal Term**).
- (c) This agreement will not automatically renew on expiry of the Initial Term or a Renewal Term (**Renewal Date**) if either party provides written notice that this agreement will not automatically renew at least 90 days prior to the Renewal Date.
- (d) At least 90 days prior to an applicable Renewal Date, Bird Control Systems will provide the Reseller with advanced written notice of the upcoming renewal and any applicable changes to the terms of this agreement (**Renewal Notice**).
- (e) If any Supply Goods are supplied after the expiry of the Term without the parties having entered into a replacement agreement or otherwise having expressly agreed in writing that these terms will not apply, the terms of this agreement will continue to apply for that supply.

4 DISTRIBUTION

- (a) Bird Control Systems grants to the Reseller a right to market, distribute and sell the Supply Goods and the Services to third parties in the Territory (excluding, unless otherwise agreed in writing, online) in accordance with this clause 4 and the intellectual property licence in clause 9.
- (b) The parties acknowledge and agree that:
 - (i) unless otherwise agreed in writing, the rights granted under this agreement to the Reseller are non-exclusive and Bird Control Systems may make the same or similar arrangements with any other third party in relation to the Territory;
 - (ii) Bird Control Systems may provide the Supply Goods (or equivalent goods) to any third party in the Territory during the Term; and

- (iii) the Reseller may not market, distribute and sell the Supply Goods to third parties outside the Territory.

5 RESELLER OBLIGATIONS

The Reseller acknowledges and agrees, that unless otherwise agreed in writing:

- (a) the Reseller is not appointed as Bird Control Systems's agent or representative and must not make any representations to third parties as to being an agent or representative of Bird Control Systems;
- (b) that the right to market, distribute and sell the Supply Goods granted under this agreement is restricted to marketing, distributing and selling the Supply Goods and providing the Services to individual costumers for the purpose of personal use and not to enter into a commercial arrangement with another business;
- (c) the Reseller must comply with all directions of Bird Control Systems in respect of the marketing, distribution and sale of the Supply Goods and the Services including following any marketing materials or directions provided by Bird Control Systems from time to time;
- (d) the Reseller will attend (either in person or online, at the sole discretion of Bird Control Systems) training on the Supply Products at a time and place determined by Bird Control Systems;
- (e) the Reseller must not sell or otherwise provide the Supply Goods to any third party for the purpose of the third party reselling the Supply Goods and the Reseller must take reasonable steps to ensure a purchaser of the Supply Goods from the Reseller is not purchasing for the purpose of reselling;
- (f) The Reseller undertakes at its own expense during the Term to have such an adequate stock of Supply Products as to meet the supply demand in the Territory;
- (g) The Reseller will use the AVIX Connect software tool for preparing technical- and commercial proposals and registration of end customer details and Supply Products for all sales of Reseller;
- (h) the Reseller must only sell the Supply Goods in accordance with any applicable Laws; and
- (i) the Reseller must ensure that in selling the Supply Goods and the Services to customers:
 - (i) they do so with due care and consideration and ensuring the appropriate Supply Goods and/or Services are provided to each customer;
 - (ii) that customers are given instructions on the proper care and usage of the Supply Goods;
 - (iii) that the Reseller provides ongoing support to customers, such as by fielding any ongoing questions customers may have regarding care and usage of the Supply Goods;
 - (iv) they do so in accordance with any documentation or instructions provided by Bird Control Systems; and
 - (v) have in place a returns policy for the sale of the Supply Goods and the provision of the Services in accordance with applicable Laws.

6 INSURANCE

- (a) The Reseller warrants that:
 - (i) it will, during the Term, have and maintain:
 - (ii) public liability insurance for and one claim or loss and in the annual aggregate;
 - (iii) professional indemnity insurance for any one claim or loss and in the annual aggregate; and
- (together, the **Insurance**); and

- (iv) the Insurance will be taken out with a reputable insurer to cover the Reseller's obligations under this agreement and responsibilities as a seller of the Supply Goods.
- (b) Where requested by Bird Control Systems, the Reseller must provide written evidence of the currency of the Insurance.

7 ORDERS AND DELIVERY

7.1 ORDERS

- (a) Bird Control Systems will make an AVIX Connect and AVIX Academy account available for the Reseller.
- (b) The Reseller acknowledges and agrees that the Website is subject to third party terms and conditions and agrees and accepts these terms which can be found here: <https://www.avix.com/legal/>. BCS .
- (c) During the Term, the Reseller may place an order for the supply of the Supply Goods with Bird Control Systems via the Website (**Order**).
- (d) Bird Control Systems will deliver the Supply Goods to the Delivery Address specified in an Order.
- (e) Bird Control Systems may in their absolute discretion impose minimum order requirements for Supply Goods either on their Website, as notified to the Reseller from time to time including after an Order is placed (**Minimum Order**) and any Orders are subject to the Minimum Order requirements.
- (f) Once an Order has been received by Bird Control Systems, that Order is irrevocable and binding on the parties and cannot be cancelled or amended unless agreed in writing by the parties.
- (g) Orders placed by the Reseller are incorporated into and form part of this agreement.

7.2 DELIVERY

- (a) Bird Control Systems will store, transport and deliver the Supply Goods:
 - (i) in accordance with all relevant laws, rules, regulations, standards, industry codes and other requirements in Australia or any other relevant jurisdictions in which the relevant Supply Goods are delivered to, through or from, relating to the supply, transportation and exporting of the Supply Goods;
 - (ii) in appropriate containers or vehicles in order to prevent contamination, deterioration or damage to the quality of the Supply Goods; and
 - (iii) together with all relevant information, certifications, registrations, forms, or other documents relating to the Supply Goods.
- (b) Any delivery timeframes provided by Bird Control Systems are estimates only and Bird Control Systems provides no guarantee that an Order will be delivered by a certain date or time.

7.3 TITLE AND RISK

Title to and risk in the Supply Goods will remain with Bird Control Systems until, and will pass to the Reseller when, the Supply Goods have been delivered to the Reseller and the Price and any applicable Shipping Fees have been paid in full.

8 PRICE AND PAYMENT

8.1 PAYMENT

- (a) Subject to clause 8.3, the price payable by the Reseller for the Supply Goods is as set out in the Pricelist and Reseller Guidelines (**Price**) and the price payable by the Reseller for delivery of the Supply Goods is as set out in the Pricelist and Reseller Guidelines (**Shipping Fees**).
- (b) Unless otherwise agreed in writing, the Reseller must pay the Price, along with any applicable Shipping Fees, at the time of placing an Order.
- (c) Upon receiving an Order, Bird Control Systems will issue the Reseller a tax invoice.

8.2 DUTIES AND TAX

- (a) The Reseller acknowledges and agrees that:
 - (i) an Order may be subject to taxes (including any export or import taxes), levies and excises (including customs tax), charges and costs (**Import Charges**) upon reaching its country of destination;
 - (ii) it is the Reseller's responsibility to pay for any applicable Import Charges and that failure to pay may result in the Order being held at the customs centre of the country of destination; and
 - (iii) Bird Control Systems will not be liable for any costs the Reseller may incur in having their Order release from customs, including reimbursing the Reseller for any Import Charges the Reseller may pay.
- (b) Unless otherwise indicated, all amounts stated in this agreement are exclusive of all taxes (including any goods and services tax), levies, excises, duties and imposts payable in connection with this agreement whether in Australia or the jurisdiction in which the Reseller and their customers or Bird Control Systems are located (**Taxes**).
- (c) If any Taxes are or become payable on a supply made under or in connection with this agreement, an additional amount is payable by the Reseller equal to the amount of Taxes payable on the relevant supply as calculated by Bird Control Systems, and subject to Bird Control Systems providing a tax invoice.

8.3 PRICE UPDATES

- (a) Bird Control Systems may, from time to time, advise the Reseller in writing of any applicable changes to the terms of this agreement, such as changes to the Price or Shipping Fees set out in the Pricelist and Reseller Guidelines (**Change Notice**).
- (b) Such modification may be made for various reasons, including to account for changes to the Consumer Price Index as most recently published by the Australian Bureau of Statistics at the time, changes in the genuine costs incurred by Bird Control Systems to supply the Supply Goods.
- (c) In the event the Reseller does not agree to the modification or does not otherwise wish to continue this agreement, the Reseller may give Bird Control Systems written notice within 14 days of Bird Control Systems having provided the Change Notice (**Non-Change Notice**).
- (d) Upon Bird Control Systems receiving a Non-Change Notice, unless otherwise agreed in writing by the parties, this agreement will terminate in accordance with clause 13.
- (e) In the event that the Reseller accepts the Change Notice in writing or does not otherwise respond within 14 days of Bird Control Systems having provided the Change Notice, the Reseller will be deemed to have accepted the modification and the applicable changes will apply from 14 days after Bird Control Systems provided the Change Notice.

8.4 PAYMENT PROVIDER

Bird Control Systems may use third-party payment providers (**Payment Providers**) to collect payments for Orders. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider and Bird Control Systems are not liable for the security or performance of the Payment Provider. Bird Control Systems reserves the right to correct, or to instruct the Payment Provider to correct, any errors or mistakes in collecting the Reseller's payment.

8.5 CARD SURCHARGES

Bird Control Systems reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

9 INTELLECTUAL PROPERTY

- (a) Each party retains ownership of its respective intellectual property and nothing in this agreement transfers ownership or assigns any Intellectual Property Rights of a party to another party.
- (b) During the Term, Bird Control Systems grants the Reseller a revocable, non-transferrable and royalty-free licence to market, distribute and sell the Supply Goods (including the use of any marketing material supplied by Bird Control Systems) in the Territory.
- (c) During the Term, the Reseller may use Bird Control Systems's logos, names, trademarks, trade devices, service marks, symbols or any insignia, design or endorsement associated with the Supply Goods for the purpose of marketing and selling the Supply Goods.
- (d) If the Reseller is aware of imminent or actual infringement of Bird Control Systems Intellectual Property Rights, it must immediately inform Bird Control Systems in writing and shall submit all relevant documentation.
- (e) For the avoidance of doubt, nothing in this agreement gives the Reseller the right to independently take legal or other steps against imminent or actual infringement of the Intellectual Property Rights.
- (f) If the rights of the Reseller and/or Bird Control Group in the Territory are infringed by a third party, Bird Control Group does not owe compensation for any loss incurred or yet to be incurred by the Reseller. The Reseller does not have the right to transfer, encumber or sublicense the license/sublicence or the rights under this Agreement.

10 CONFIDENTIALITY AND RESTRAINT

10.1 CONFIDENTIALITY

Except as contemplated by this agreement, a party must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any confidential information disclosed to it by another party without that party's prior written consent.

This clause does not apply to:

- (a) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
- (b) information required to be disclosed by any law; or
- (c) information disclosed by the Reseller to its subcontractors, employees or agents for the purposes of receiving or reselling the Supply Goods or fulfilling its obligations under this agreement.

10.2 RESTRAINT

- (a) The Reseller will not, during the Term and within the Restraint Period, anywhere in the Geographic Area either directly or indirectly:

- (i) canvass, solicit, compete for the custom of a client, customer of, or supplier to Bird Control Group with whom the Reseller had direct or indirect dealings during the twelve months prior to the termination this agreement;
 - (ii) engage in or be involved in a business that competes, directly or indirectly, with Bird Control Systems or provides the same or similar products or services (including but not limited to the Supply Products and/or Services) to Bird Control Systems including as a principal, agent, director, employee, partner, majority shareholder or unit holder, joint venturer, trustee, beneficiary, contractor, advisor, consultant or in any capacity in which you could use, disclose or copy the Confidential Information to that competitor;
 - (iii) solicit, induce, encourage, or attempt to solicit, induce or encourage any employee of Bird Control Systems to leave the employment of Bird Control Systems where the Reseller had personal dealings with that employee in the last 12 months prior to the termination of this agreement; or
 - (iv) induce, counsel, procure or otherwise assist any person to do any of the acts referred to in this clause 10.2.
- (b) The Reseller acknowledges and agrees that the only effective, fair and reasonable manner in which the interests of Bird Control Systems can be protected is by these restraints and the maximum duration, extent and application of these restrictions are not greater than is reasonably necessary for the protection of the interests of Bird Control Systems, given the nature of its business and undertaking.
- (c) The Reseller acknowledges and agrees that damages may not be an adequate remedy for Bird Control Systems for any breach of the restraints contained in this clause and the remedies of injunction, specific performance and other equitable relief may be appropriate for any threatened or actual breach of this clause 10.2
- (d) Each restraint contained in clause 10.2 (resulting from any combination of the Geographic Area and the Restraint Period) constitutes a separate and independent provision, severable from other restraints.
- (e) For the purposes of this agreement:
- (i) "Restraint Period" means:
 - (A) Twenty-four months from the date when this agreement terminates for any reason; and
 - (B) Twelve months from the date when this agreement terminates for any reason.
 - (ii) "Geographic Area" means:
 - (A) Australia; and
 - (B) Victoria.

11 WARRANTIES

- (a) Each party warrants to the other party that as at the date of this agreement:
- (i) it is validly existing under the laws of its place of incorporation or registration;
 - (ii) it has taken all necessary action to authorise its entry into and has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
 - (l) its obligations under this agreement are valid and binding and enforceable against it in accordance with their terms; and
 - (iii) it has and will at all times comply with all relevant laws, rules, regulations, codes of practice and other requirements relating to, and the sale of, the Supply Goods, including that it holds all necessary registrations, permits, licences and

other authorisations in respect of the Supply Goods (**Laws and Authorisations**).

- (b) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (c) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**) or any other rights the Reseller may have under any applicable Laws.

12 LIABILITY AND INDEMNITY

- (a) (**Liability**) To the maximum extent permitted by applicable law, Bird Control Systems limits all liability in aggregate of all claims to the Reseller (and any third parties who encounter the services or goods through the Reseller's business) for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to this agreement or any goods or services provided by Bird Control Systems to the amount paid by the Reseller to Bird Control Systems under the most recent Order.
- (b) (**Indemnity**) The Reseller indemnifies Bird Control Systems and its employees, contractors and agents in respect of all liability for any claim(s) by any person (including any third party who encounter the services or goods through the Reseller's business) arising from the Reseller's or the Reseller's employee's, customer's, contractor's or agent's:
 - (i) breach of any third party intellectual property rights;
 - (ii) breach of any term of this agreement, including any of the warranties outlined in clause 10.2(a);
 - (iii) breach of any applicable Laws, including as a result of the use, marketing, distribution or sale of the Supply Goods or Services;
 - (iv) negligent, wilful, fraudulent or criminal act or omission;
 - (v) use of any Supply Goods provided by Bird Control Systems; or
 - (vi) supply of the Services.
- (c) (**Consequential loss**) To the maximum extent permitted by law, under no circumstances will Bird Control Systems be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this agreement or any goods or services provided by Bird Control Systems (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth) or any applicable Laws).
- (d) (**Assistance**) If a claim is made by a person against Bird Control Systems arising out of or in connection with the Reseller, the Reseller must (and must ensure that its Personnel), at the expense of the Reseller, provide all reasonable assistance and co-operation to Bird Control Systems in the conduct of any legal or other proceedings including, without limitation:
 - (i) providing all relevant documents in its possession;
 - (ii) signing any documents or authorities; and
 - (iii) as may be reasonably required for the prosecution or advancement of any legal or other proceedings.

13 TERMINATION

13.1 TERMINATION

- (a) The Reseller may terminate this agreement at any time by providing 90 days written notice to Bird Control Systems.

- (b) Without limiting clause 13.1(a), either party (**Non-Defaulting Party**) may terminate this agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party:
 - (i) is in breach of this agreement and either:
 - (A) fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
 - (B) that breach is not capable of remedy;
 - (ii) suffers an Insolvency Event; or
 - (iii) ceases, suspends or threatens to cease or suspend to conduct its business.

13.2 ACCRUED RIGHTS AND LIABILITIES

The expiration or termination of this agreement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this agreement occurring prior to expiration or termination of this agreement.

13.3 CONSEQUENCES OF EXPIRATION OR TERMINATION

- (a) Upon expiration or termination of this agreement, the Reseller must:
 - (i) immediately cease and desist from the use of the Intellectual Property Rights and cease and desist from the marketing, distribution and sale of the Supply Products, unless permitted by Bird Control Systems in writing in respect of any remaining inventory of Supply Products held by the Reseller;
 - (ii) immediately send Bird Control Systems a written report, stating:
 - (A) the stock of the Supply Products that the Reseller or a third party on behalf of the Reseller has in its possession; and
 - (B) the promotional material that the Reseller or a third party on its behalf has in stock.
 - (iii) Upon written request by Bird Control Systems, deliver to Bird Control Systems (at the cost of the Reseller) all remaining Supply Products that the Reseller or a third party on behalf of the Reseller has in its possession;
 - (iv) immediately return to Bird Control Systems (or at the direction of Bird Control Systems, destroy) the objects that the Reseller holds on behalf of BCS, including promotional material, demo equipment, price lists, company information, etc; and
 - (v) immediately refrain from any further use of the Intellectual Property Rights to promote the Supply Products; and
 - (vi) pay any outstanding amounts owed to Bird Control Systems, including for Orders to be fulfilled under clause (a)14.3(a).
- (b) Where this agreement is terminated by the Reseller, or due to the Reseller's default, the costs of transport, insurance, taxes and levies that are due when returning or transferring the Supply Products and other objects under this clause 13.3 are payable by the Reseller;
- (c) The Reseller shall use its best endeavors to ensure that the transfer of its responsibilities to Bird Control Group or to any other party designated by Bird Control Group has as little adverse effect as possible for third parties.

13.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry, including without limitation clauses 8, 9, 10, 11, 12, 13.

14 IF THE PARTIES HAVE A DISPUTE

- (a) If an issue between the parties arises under this agreement that cannot be resolved day-to-day, the parties will make genuine efforts in good faith to participate cooperatively in mediation, at equal shared expense of the parties.
- (b) The parties will conduct mediation through the Australian Disputes Centre (**ADC**) and in accordance with the ADC's Guidelines for Commercial Mediation (as current at the time of the dispute).
- (c) The parties will follow the mediator's recommendations on the extent of mediation required, and when to stop mediation if the issue cannot be resolved.
- (d) If mediation does not resolve the issue, the parties must:
 - (i) if they haven't already done so, engage independent legal representation at their own expense to understand the strength of their arguments; and
 - (ii) based on that advice, if settlement is not achieved, participate in arbitration (or other dispute resolution mechanism agreed in mediation) through the ADC at equal shared expense.
- (e) The parties will follow the binding outcome of arbitration (or other agreed mechanism).
- (f) Either party may at any time during this process make an offer for settlement. The parties acknowledge and agree it is in their best interests to properly consider all genuine settlement offers. The parties will use best endeavours to avoid litigation and reach a prompt settlement.
- (g) The process in this clause does not apply where a party requires an urgent injunction.

15 NOTICES

- (a) Any notices required to be sent under this agreement must be sent via email using the party's email addresses set out at the beginning of this agreement and the email's subject heading must refer to the name and date of this agreement.
- (b) If no email address is stated in this agreement, the notice may be sent to the email address most commonly used by the parties to correspond in relation to this agreement at the time the notice is sent.
- (c) The notice will be considered to be delivered 24 hours after it was sent, unless the sender has reason to believe the email failed to send or was otherwise not delivered or received.

16 GENERAL

16.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

16.2 BUSINESS DAYS

If the day on which any act is to be done under this agreement is a day other than a Business Day, that act must be done on or by the immediately following Business Day except where this agreement expressly specifies otherwise.

16.3 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

16.4 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

16.5 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

16.6 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

16.7 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

16.8 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

16.9 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

16.10 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

16.11 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation;

- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to Australian currency, unless otherwise agreed in writing.

17 DEFINITIONS

A term or expression starting with a capital letter which is defined below has the meaning given to it in the following:

Term	Meaning
Business Day	A day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Melbourne, Australia.
Commencement Date	The date of the last party to this agreement signs this agreement.
Delivery Address	In respect of an Order, the address for delivery specified in that Order.
Indemnified Loss	Loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, outgoing, fine or payment of any nature or kind.
Insolvency Event	In relation to a party, the occurrence of any of the following: <ul style="list-style-type: none"> (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of that party or any of its assets; (b) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of that party; (c) that party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or that party is declared or taken under any applicable law to be insolvent or that party’s board of directors resolves that it is, or is likely to become at some future time, insolvent.
Intellectual Property Rights	All copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.
Key Agreement Details	The table set out at the beginning of this agreement titled “Key Agreement Details”.
Laws	Any applicable legislation, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdictions where the Supply Goods are supplied or received and includes any industry codes of conduct.
Personnel	In relation to a party, its representatives, employees, secondees, agents and subcontractors (who are individuals), including employees and contractors (who are individuals) of subcontractors.
Services	Means the installation and set-up of the Supply Goods.
Supply Goods	Such goods as supplied or sold by Bird Control Systems from time to time.

Term	Meaning
Territory	The Territory as set out in the Key Agreement Details.
Website	Means https://www.birdcontrolgroup.com/ and any of its subdomains.