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Card Recon Consultant Version

Terms and Conditions of Use

It is important that the Licensee reads these terms carefully. This is a Software Licence Agreement for a Software Product protected by copyright and other intellectual property laws both nationally and internationally. All rights not expressly granted in this Agreement are owned by Ground Labs Pty Limited (hereinafter referred to as "Ground Labs").

This Agreement is to apply in two situations, namely to licence:

- (i) a single individual in sole professional practice having the status of a Qualified Security Assessor (hereinafter referred to as "QSA"); or
- (ii) a partnership, corporation or other business entity in which individuals have the status of QSAs.

Hereinafter, either the single individual or business entity shall be referred to as "the Licensee".

The grant of the Licence will either result from a direct negotiation between the prospective Licensee and Ground Labs, or a Purchase Order for a Licence will be transmitted to Ground Labs by a reseller, partner or other authorised agent.

This Software License Agreement shall represent a binding legal agreement between the Licensee and Ground Labs. To enter into this Agreement, the individual or an authorised representative of the business entity to be licensed shall e-mail Ground Labs Pty Limited or its authorised reseller or partner confirming:

- (i) the individual's or business entity's identity;
- (ii) that all relevant individuals, whether as a sole practitioner, employees or members, hold the status of QSAs; and
- (iii) unconditional willingness to be bound by the terms of this Agreement.

The authorised representative of the business entity must also indicate the number of consultants to be covered by the Licence and the prospective Licensee must pay the current fixed fee per QSA specified in a quotation or invoice issued by Ground Labs or its authorised reseller or partner. This quotation or invoice shall specify the term of the Licence that may be acquired, whether quarterly, half-yearly, annual or otherwise.

1. Term

- 1.1 The Term of this Agreement shall commence on the date the Licensor sends an e-mail to the Licensee, accepting the offer to enter into this Agreement and confirming the grant of the Licence for a fixed renewable Term under clause 2 below. The Licence shall continue in force, being renewed automatically upon payment of the requisite fee, unless revoked or terminated under clause 11 below.

2. Grant of the Licence

- 2.1 In consideration of the Licensee's promise to comply with the duties and obligations set out in this Agreement and the payment of the fee, the Licensor grants the Licensee a non-exclusive, non-transferable, revocable license to use the downloaded software (hereinafter referred to as the "Software Product") and the associated media which may include both printed and online or electronic documentation (hereinafter referred to as the "Documentation") the whole being referred to as the "Licensed Product".

- 2.2 In the event the Licensee is a business entity, it shall have the power to sublicense the nominated QSAs who are authorised to use the Licensed Product.
- 2.3.1 For the avoidance of doubt, the Licensee does not have the rights to:
- (i) modify the software to add functionality or change the way in which the Licensed Product works;
 - (ii) reverse engineer, disassemble or make any other form of attempts to access the source code of the Licensed Product;
 - (iii) create any derivative works based on the Licensed Product without the written permission of Ground Labs; or
 - (iv) sublicense the use of the Software Product to any third party not authorised by the Licence.
- 3. The Licensee's Express Representation**
- The Licensee formally represents that the individuals to be licensed are QSAs, validated by the Payment Card Industry Security Standards Council, and so entitled to audit third party organizations and their computer systems to determine whether they are in compliance with the Payment Card Industry Data Security Standard (PCI DSS) or any other related standards managed by the PCI Security Standards Council.
- 4. Scope of the Licence**
- The Licensee may download, install, access and use one copy of the Software Product and authorisation keys for every nominated QSA, including any modifications or upgrades supplied by the Licensor, on a single computer. Once downloaded, the Licensee may use the copies of the Software Product on different third party computers for auditing purposes. If the Software Product is to be transferred to other computers, it is a condition of this Agreement that one or more sublicensed QSAs remain present and in control of the third party machine(s) during the time the Software Product is in use. Once the use is complete, the nominated and sublicensed QSAs shall delete the Software Product and the authorisation key file from the third party machine(s). The Licensee formally acknowledges that breach of this condition shall entitle the Licensor to recover from the Licensee all licence fees lost through the unauthorized distribution of the Licensed Product both to third party clients and by the Licensee's third party clients.
- 5. The Licensee's Duties**
- 5.1 During the term of this licence, the Licensee shall not:
- (i) share the Software Product with any other member of the business organisation or any other person who works with or for the Licensee who is not nominated in the Licence;
 - (ii) allow any client or other third party whose computer the Licensee is accessing for auditing purposes to make a copy of the Software Product or the authorisation key file;
 - (iii) take reasonable care to ensure that copies of the Software Product are not distributed to any other third party without the payment of a licence fee;
 - (iv) remove or destroy any trademark or copyright markings placed on or contained in the source code, object code, Documentation or the Licensed Product generally;
 - (v) take reasonable care to maintain strict confidentiality on the Licensed Product, all trade secrets, know-how and other proprietary information belonging to the Licensor.
- 5.2 In the event the Licensee is a business entity, it shall immediately notify the Licensor if there is to be any change in the number of QSAs licensed to use the Software Product, giving details of any individual who is to cease holding a sublicense and/or of any new individual who is to hold a sublicense. If an individual is to be added to a Licence during the year, a pro rata fee shall be paid to cover the grant of the sublicense for the remaining months until renewal of the Licence.

6. Ownership of Intellectual Property Rights

The Licensor shall at all times retain the sole and exclusive ownership of the Licensed Product and all associated Intellectual Property Rights. The Licensee hereby agrees not to assert any rights as against the Licensor with respect to any content or materials developed by it. The Licensee will not acquire any rights of any kind to use any trademark, trade name, logo or other design owned by the Licensor except as expressly authorised in writing by the Licensor.

7. Indemnity

The Licensee agrees to indemnify and hold harmless the Licensor from:

- (i) any and all liability of any kind or nature whatsoever to clients and third parties which may arise from acts or omissions in respect of any unauthorised use of the Licensed Product; and
- (ii) any liability arising in connection with any unauthorized representation or any misrepresentation of fact made by the Licensee, his agents or employees to any third party with respect to the Licensed Product.

8. Limited Warranty

During the term of this Agreement, the Licensor warrants that the Licensed Product will operate in reasonable conformity to the Licensor's specifications. The Licensor does not warrant that the Licensed Product or any portion thereof is error-free. The Licensee's exclusive remedy, and the Licensor's entire liability in tort, contract or otherwise for any nonconformity under this Section shall be the correction of the nonconformity.

9. Disclaimer

Except for the express limited warranty provided in Section 8, the Licensed Product is provided "as is" without any warranty whatsoever. The Licensor disclaims all warranties, express, implied or statutory, as to any matter whatsoever, including all implied warranties of merchantability and fitness for a particular purpose. The Licensor disclaims any warranty or representation to any person other than the Licensee with respect to the Licensed Product. The Licensee shall not make or pass through any such warranty on behalf of the Licensor to any clients or any other third party. Similarly, the Licensee shall take all measures necessary to ensure that agents and employees also do not make or pass through such warranties.

10. Limitation of Liability

In no event shall the Licensor be liable to the Licensee (or to any person claiming rights derived from the Licensee) for indirect, incidental, special, consequential or exemplary damages arising out of or related to the transactions contemplated under this Agreement, including but not limited to lost profits, business interruption or loss of business information, even if the Licensor has been advised of the possibility of such damages.

11. Revocation and Termination

- 11.1 The Licence granted under Section 2 shall be effective as of the date of the e-mail of acceptance sent by the Licensor and shall continue in full force and effect unless the Licensor shall revoke the licence. Revocation may be without notice for cause.
- 11.2 The Licensee shall be entitled to terminate all the licence rights granted by this Agreement at any time on written notice to the Licensor in the event of a default by the Licensor and a failure to cure such default within a period of sixty days following receipt of written notice specifying that a default has occurred or, if any such default is incapable of being cured within such period, a failure within

such sixty-day period to commence and diligently pursue a cure; provided, however, that in no event shall the Licensor have more than sixty days after receipt of written notice of a default to cure such default.

12. Insolvency

In the event that either Party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by or against either Party seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver, liquidator or trustee of any of either party's property or assets, or upon the liquidation, dissolution or winding up of either party's business, then and in any such events, all the licence rights granted pursuant to this Agreement may immediately be terminated by the other Party upon giving written notice.

13. Disposition of the Software and User Manuals on Termination

Upon the revocation or termination of the licence granted by Section 2, the remaining provisions of this Agreement shall remain in full force and effect, and the Licensee shall cease using the Licensed Product. The Licensee shall immediately destroy all copies of the Licensed Product and all information and documentation provided by the Licensor to the Licensee including all know-how.

14. Assignment

This Agreement shall not be assignable by the Licensee, by operation of law or otherwise, without the prior written consent of the Licensor, which consent shall not be unreasonably withheld.

15. Severability

If any provision or term of this Agreement is found by any arbitrator or court of competent jurisdiction to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such provision or term or part shall to that extent be deemed not to form part of this Agreement so that the remainder of this Agreement shall otherwise remain in full force and enforceable.

16. Survival

All individual clauses and terms, which by their nature should survive, will survive the termination of this Agreement.

17. Whole agreement

This Agreement contains the entire understanding between the Parties in connection with the subject matter and it supercedes or replaces any and all prior negotiations, agreements, and/or representations, whether oral or written, between the Parties.

18. Governing law

This Agreement shall be governed by and interpreted under the substantive and procedural laws of the State of New South Wales and, on a non-exclusive basis, the Parties agree submit to the jurisdiction of the courts located in Sydney, New South Wales, acknowledging that those courts constitute the most convenient forum for the resolution of all claims by the Licensee against the Licensor. But the Parties also accept that it is more convenient for all claims against the Licensee, whether for emergency relief by way of injunction or for money damages following the release of unauthorised copies of the Software Package and/or the authorisation key file to the Licensee's clients, to be heard in the courts of the jurisdiction in which the Licensee is resident.