



# PaperCut EULA

## END USER LICENSE AGREEMENT (EULA)

### END USER LICENSE AGREEMENT

#### 1 - AGREEMENT

1.1 This End User License Agreement is between PaperCut Software International Pty Ltd (ACN 124 440 400) of Levels 1 and 2, 10 Hamilton Place, Mount Waverley, Victoria, 3149 (PaperCut), and:

(a) if there has been no charge for the license and it is an Evaluation License, the company with whose authority the person is installing the Software for the purpose of the evaluation; or

(b) if there has been a charge for the license and it is a Production License, the company that is entered into the Company Details tab on the Website.

#### 2 - DEFINITIONS

2.1 Affiliate means an entity owned by, controlling, controlled by, or under common control with, directly or indirectly, an entity. For this purpose, one entity "controls" another entity if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract).

2.2 Agreement means the terms and conditions in this End User License Agreement and the Support Policies, and, if this is a Production License any details in the Contract Details, as may be amended by a Variation.

2.3 Authorized Platform means servers, workstations, printers, multi-function devices and mobile devices that are owned, leased or controlled by You or Your Affiliates on which the Software is designed to be used.

2.4 Confidential Information means any non-trivial non-public information however recorded, preserved, disclosed or communicated (whether directly, indirectly, orally or by writing), disclosed by either party or its Representatives to the other party or its Representatives in connection with this Agreement that is or, ought to have been, understood by the Parties, using reasonable business judgment, to be confidential. The Software and related documentation, License Keys and this Agreement, including the terms, pricing and Fees payable, are agreed to be the Confidential Information of PaperCut.

2.5 Contract Details means the details of any transaction for a Production License that relate to the Software license, the maximum number of Users (or other license metric that is applicable

to the particular Software program), the Premium Upgrade Assurance service and the Fees and Taxes, that are advised to You and/or are selected, or entered, by You on the Website as You placed Your order, or that You have otherwise agreed in writing with PaperCut. (These Contract Details are included on the proof of purchase confirmation email that is sent to You after You have acquired the Production License).

2.6 Discloser means the party that makes a disclosure of Confidential Information.

2.7 Effective Date means:

(a) For an Evaluation License, the first date of installation of the Software on any of Your Authorized Platforms; or

(b) For a Production License, the date that the person clicked "I Agree" during the sign on process.

2.8 Evaluation License means the right to use the Software in accordance with clause 4.1.

2.9 Fees mean the amount payable for the relevant Software license, the Premium Upgrade Assurance service or other items acquired under the Agreement, as applicable, exclusive of Taxes.

2.10 Intellectual Property Rights means copyright, moral rights, trade mark, design rights, service marks, patent, semiconductor or circuit layout right, trade secrets, know-how, database rights or other rights in the nature of intellectual property rights (whether registered or unregistered), or any right to registration of such rights, existing anywhere in the world, or protected by statute from time to time, whether created before, on or after the Effective Date.

2.11 License Key means any form of license file, lock, password or other mechanism that may be used to control access to, or manage use of, the Software.

2.12 PaperCut Marks means all trademarks, service marks, logos or other words or symbols identifying the Software, Premium Upgrade Assurance service or PaperCut's business, whether owned by PaperCut or any PaperCut Affiliate), and all trademarks, service marks, logos or other words or symbols identifying any third party software that is licensed by the third party to PaperCut and integrated in the Software.

2.13 Premium Upgrade Assurance means the services described in clause 5.

2.14 Production License means the right to use the Software in accordance with clause 4.2.

2.15 Recipient means the party that receives a disclosure of Confidential Information.

2.16 Representatives mean the employees, agents, contractors of a party, or those of any Affiliate, and the professional representatives of a party providing advice in relation to this Agreement, including the lawyers, bankers, auditors, accountants and insurers of a party.

2.17 Software means the object code version of PaperCut's software program (including the online documentation and help tutorials) that can be used on an Authorized Platform, and any Updates and Upgrades that may be made available by PaperCut, in its discretion, in accordance with this Agreement. The term Software does not include any beta, pre-release or other special release programs.

2.18 Support Policies means PaperCut's document that describes the policies, processes and scope of support services for the Software, as are posted on the Website under the heading Support. The Support Policies may be updated by PaperCut in its discretion from time to time.

2.19 Taxes includes goods and services taxes or other sales taxes, duties, withholding taxes, levies, imposts or other charges or duties levied by any federal, state or local government which arise out of or in connection with the Software, Premium Upgrade Assurance service or this Agreement, and any interest, penalties or liabilities incurred on such amounts, but excludes taxes based on the net income of PaperCut.

2.20 Update means any bug fixes, patches or workarounds for the Software that have been produced primarily to overcome defects in the Software without significantly altering the functionality of the Software.

2.21 Upgrade means a version of the Software that has been produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancements (whether or not defects are also corrected). Upgrades do not include any software that is marketed by PaperCut as a different product. PaperCut shall determine in its discretion whether any software is an Upgrade or a different product.

2.22 User means an identifier (individual's name or generic term such as "purchasing officer") that is listed as a user in the Software's database. Any User that is defined by a generic term may only be used by a single individual. All Users from You and/or Your Affiliates who have identifiers listed as users in the Software's database are included in aggregate in the total number of Users.

2.23 Variation means any addition, deletion or substitution to any part of this Agreement that is made in accordance with this Agreement.

2.24 You (and other grammatical forms of You) means the entity that is the licensee of the Software and is determined in accordance with clauses 3.1 to 3.4.

2.25 Website means the PaperCut website from which You can acquire the Software, Premium Upgrade Assurance service, additional Software programs, add more Users or other license usage or extended Your Premium Upgrade Assurance service.

### **3 - AGREEMENT AND LICENSE**

3.1 Where there has been no charge for the license and it is an Evaluation License then the person that installs the Software and clicks "I Agree" during the installation process warrants to PaperCut that he/she had authority to enter into this Agreement on behalf the entity that is his/her employer.

3.2 Where there has been a charge for the license and it is a Production License then the person that clicked "I Agree" during the sign on process warrants to PaperCut that he/she had authority to enter into this Agreement on behalf the entity that was entered into the Company Details tab on the Website during the sign on process.

3.3 By using the Software the entity that uses the Software adopts this Agreement as from the Effective Date, and that entity acknowledges that it is bound by the terms and conditions of the Agreement as from the Effective Date, even if the person that installed the Evaluation License or clicked "I Agree" for the Production License during the sign on process (as applicable) did not have authority to enter into this Agreement on behalf the entity that uses the Software.

3.4 If there is any difference between the entity that was entered into the Company Details tab on the Website during the sign on process and the entity that uses the Software, the latter shall prevail. This latter entity is bound by the terms and conditions of the Agreement and is referred to as You in this Agreement.

3.5 To the extent that there is any conflict between:

(a) The Contract Details that appear on the Website; and

(b) The Contract Details that appear in any other document that is issued by PaperCut prior to You, the latter shall prevail.

### **Evaluation**

3.6 Where You requested to be provided with a free of charge Evaluation License for the Software (via the Website or other means) then PaperCut will make the Software available for You to download from the Website, subject to you agreeing to this Agreement as part of the installation process. If You agree to the Agreement then You acquire an Evaluation License, from the Effective Date until the license is terminated in accordance with clause 3.8. There is no Fee payable for an Evaluation License.

3.7 PaperCut does not provide Premium Upgrade Assurance services for Evaluation Licenses, but may, in its discretion, provide assistance, advice and error correction services to support Your evaluation of the Software.

3.8 A Evaluation License:

(a) terminates automatically after 40 days from the Effective Date, unless extended by agreement with PaperCut;

(b) Will be terminated if the Agreement terminates in accordance with clause 13.

### **Upgrading to a Production License**

3.9 You may upgrade an Evaluation License into a Production License by agreeing the Contract Details with PaperCut, including by completing the Contract Details on the sign on process on the Website and agreeing to pay the relevant Fees and Taxes. You may also acquire Premium Upgrade Assurance services at the same time. The Production License and any Premium Upgrade Assurance service will be provided on the terms and conditions of this Agreement. PaperCut will provide You with a License Key to enable You to access the Software for use as Production License.

### **Production License**

3.10 Where you acquire a Production License by agreeing the Contract Details with PaperCut, including by completing the Contract Details on the sign on process, then You acquire a license for the Software in accordance with clause 4.2 and the right to receive and install any Updates for that Software that may be issued by PaperCut from time to time. You must install Updates promptly, especially Updates that have been made available for security issues. There are no additional Fees for this right to receive Updates.

### **Premium Upgrade Assurance**

3.11 Where You requested to be provided with Premium Upgrade Assurance services in the Contract Details, PaperCut will provide those Premium Upgrade Assurance services for 12 months from the Effective Date in accordance with clause 5.

### **Additional Licenses, Usage or Premium Upgrade Assurance.**

3.12 If You wish to add more Software programs, add more Users or other license usage or extended Your Premium Upgrade Assurance service and such items are available from PaperCut at the time, You may acquire those items by agreeing the relevant Contract Details with PaperCut, including by completing the Contract Details on the Website and agreeing to pay PaperCut's then current Fees and Taxes for such items. Any such items will be provided on the terms and conditions of this Agreement.

3.13 If You do not extend Your Premium Upgrade Assurance service so that Premium Upgrade Assurance service is provide continuously, and subsequently wish to re-instate Premium Upgrade Assurance service, then You must pay PaperCut's then current support re-instatement fee in addition to the then current Fees for the Premium Upgrade Assurance service prior to the Premium Upgrade Assurance service being re-instated.

### **Variations**

3.14 Subject to clauses 3.9 and 3.12, this Agreement, or any part of it, may be varied by the parties agreeing to the Variation in writing (and the Variation will be binding when both parties have signed the Variation).

## **4 - LICENSES**

### **Evaluation License**

4.1 From the Effective Date until the license is terminated in accordance with this Agreement, PaperCut grants You a non-exclusive, non-transferable, limited use license solely to install and run the Software on one or more computers that are Authorized Platforms for You and your Affiliates to evaluate the Software to determine whether to acquire a Production License. Under this Evaluation License You and Your Affiliates may use the Software for testing, development, prototyping and conducting pilots in a production environment prior to the termination of the Evaluation License.

### **Production License**

4.2 Subject to receipt of the applicable Fees and related Taxes, PaperCut grants You a non-exclusive, non-transferable, indivisible, limited use license solely to install and run the Software on one or more computers that are the Authorized Platforms, for use by You or Your Affiliates from the Effective Date until the license is terminated in accordance with this Agreement, for:

(a) up to the maximum number of Users or other license metric set out in the Contract Details, for Your internal business data processing/printing requirements in accordance with, and subject to any other limitation of use set out on, the Contract Details; and

(b) For testing, disaster recovery and back up (hot or cold backups), (without additional Fees).

### **Delivery**

4.3 Promptly following the Effective Date, PaperCut will make the Software available for download from the Website, at no additional cost. If you specifically request, PaperCut will ship to you a physical copy of media with the software loaded on it, at additional cost. You are responsible for copying and installing the Software on the Authorized Platforms. You must follow any instructions provided by PaperCut when installing the Software. All Software is deemed accepted by you upon successful installation on the first Authorized Platform.

### **Prohibited Actions**

4.4 Nothing in this Agreement permits you to:

(a) Use the Software to provide any facility management or service bureau service, or for the benefit of any third party (other than an Affiliate);

- (b) Disclose the Software or any online or hard copy documentation related to the Software to any third party (other than an Affiliate);
- (c) Adapt, translate, publish, communicate to the public, or create any derivative work or translation of the Software, unless expressly permitted by law;
- (d) Sub-license, lease, rent, loan, assign, novate or otherwise transfer the Software to any third party;
- (e) Reverse engineer, reverse compile, de-compile or disassemble the object code of the Software or any part of the Software (or other underlying data), or otherwise attempt to derive the source code of the Software, except to the extent the permitted by law;
- (f) Use any part of the Software other than as an integrated part of the overall Software program;
- (g) Remove, alter or obscure any PaperCut Marks, or any proprietary or restricted use notice on the Software;
- (h) Allow the Software to become the subject of any charge, lien, encumbrance or security interest; or
- (i) Deal in any other manner with any or all of your rights and obligations under this Agreement.

## **Compliance**

4.5 You acknowledge and agree that the License Key may prevent, hinder or reduce availability of features where you are using the Software in excess of the usage rights that you have agreed to pay for.

4.6 During the period of this Agreement and for 2 years thereafter, You must permit PaperCut, or its nominee, to inspect and have access to the Software, the usage logs in the Software and to any records kept in connection with this Agreement, for the purposes of ensuring that You (and Your Affiliates) are complying with the terms of this Agreement. If PaperCut requires access to your offices (or those of Your Affiliates) in order to access the Software or the relevant records then:

- (a) PaperCut must provide reasonable advance notice to you;
- (b) Any access must be during business hours or other times agreed by you;
- (c) PaperCut must use reasonable endeavors to minimize any disruption to your business; and
- (d) if PaperCut uses a nominee to conduct the inspection, such nominee must not be a competitor to You and must sign a non-disclosure agreement with PaperCut that

protects any information found during the inspection on terms that are no less protective than those terms that are included in clause 10 of this Agreement.

## **5 - PREMIUM UPGRADE ASSURANCE**

5.1 This clause 5 applies during the period when you have acquired Premium Upgrade Assurance services for a Production License.

5.2 If and when PaperCut makes an Update or Upgrade generally available to customers with Premium Upgrade Assurance services for the Software it will be made available to you at no additional charge. You must, at your own cost, download and install the Update or Upgrade within a reasonable period.

5.3 If you (or any of your employees or employees of any of Your Affiliates) believe that there is a defect in the Software those employees should report it to your internal support desk personnel, and your internal support desk personnel should report it to PaperCut's support email address 24/7 or call PaperCut's support helpline during business hours. You should ensure that your internal support desk personnel are technical competent and trained in the use of Software. They must use reasonable efforts to resolve the issue prior to contacting PaperCut for assistance.

5.4 PaperCut will use its best efforts to provide a remedy or a workaround for any defect in the Software that is reported to its support helpline in a timeframe that is reasonable given the nature of the issue and the impact on your business operations.

5.5 PaperCut shall have no obligation to provide Premium Upgrade Assurance services:

(a) in respect of any Software which has not had any Update or Upgrade installed prior to the date that PaperCut has notified its customers generally that is the "end of life" date for that version. PaperCut shall provide its customers with at least 90 days notice, including by posting notice on the Website, of an "end of life" date for that particular version;

(b) To any adaptations, translations or derivative works made to the Software; or

(c) For any Evaluation License.

5.6 PaperCut shall have no obligation to provide Premium Upgrade Assurance services where faults arise from:

(a) Misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by PaperCut), including failure or fluctuation of electrical power;

(b) Failure to maintain the necessary environmental conditions for use of the Software;



(c) Use of the Software in combination with any equipment or software other than Authorized Platforms;

(d) Any breach of your obligations under this Agreement;

(e) Having the Software maintained by a third party; or

(f) User error.

5.7 If it is necessary for PaperCut to attend Your (or Your Affiliates') premises to provide Premium Upgrade Assurance services, or PaperCut determines that the work it performed in relation to a logged issue was caused by any of the items in clause 5.6, then You must pay for such work at PaperCut's then current Fees and charges as well as any expenses (and travel time) incurred by PaperCut in performing such work.

## **6 - WARRANTY**

6.1 Where you are entitled to the benefits of the statutory guarantees under s54 to 59 and/or 60 to 62 of the Australian Consumer Law (Competition and Consumer Act 2010 (CT)), then Regulation 90 (issued under that Act) applies. "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

6.2 Where the Australian Consumer Law applies, PaperCut provides you with the following information as is required by Regulation 90:

The Premium Upgrade Assurance services that are provided to remedy any defect in the Software are a "Warranty Against Defects" as defined in Regulation 90. These Premium Upgrade Assurance services are provided by PaperCut Software International Pty Limited (ACN 124 440 400) of Level 1 and 2, 10 Hamilton Place, Mount Waverly, Victoria 3149, telephone number +61 3 9809 5194, email address [customer.service@papercut.com](mailto:customer.service@papercut.com).

In order to make use of this Premium Software You must contact PaperCut's support helpline during the period of your agreement for Premium Upgrade Assurance service using process in clause 5.3.

When you make use of these Premium Upgrade Assurance services, PaperCut will use its best efforts to provide a remedy or a workaround for any defect in the Software in a timeframe that is reasonable given the nature of the issue and the impact on your business operations.

This service is not available for Evaluation Licenses. The costs for the service in respect of the Production Licenses are included within the Fees that are set out in the Contract Details. No

additional fees are payable by you for this Premium Upgrade Assurance for Production Licenses. You are responsible for any expenses you incur in using this Premium Upgrade Assurance.

The benefits that we provide to consumers under our Warranty Against Defects are in addition to any other rights or remedies a consumer may have in respect of these goods or services under the Australian Consumer Law.

6.3 PaperCut gives notice in accordance with Regulation 91 issued under the Australian Consumer Law that the provision of Premium Upgrade Assurance may result in the loss of user generated data.

## **7 - FEES AND TAXES**

7.1 PaperCut will provide you with the ability to download the Software from our Website as an Evaluation License for use in accordance with this Agreement without charge.

7.2 Where You agree on the Contract Details to pay the Fees, charges and Taxes for any Production License, Premium Upgrade Assurance, additional Software, additional Users or extended usage rights, further period of Premium Upgrade Assurance or other thing acquired under this Agreement by credit card (or other online payment mechanism supported by PaperCut) then you must complete the relevant details and authorizations stated on the Website. PaperCut will provide you with a tax invoice/receipt promptly following receipt of cleared funds.

7.3 Where You agree on the Contract Details to pay the Fees, charges and Taxes for any Production License, Premium Upgrade Assurance, additional Software, additional Users or extended usage rights, further period of Premium Upgrade Assurance or other thing acquired under this Agreement following receipt of a tax invoice, PaperCut will provide You with a tax invoice for the Fees and Taxes at the start of the license or the supply of the service and You must pay this tax invoice within 14 days of receipt.

7.4 You are solely responsible for ensuring that PaperCut receives the net amount of the Fees for any transaction under this Agreement, including:

- (a) You must pay any fee for receiving the Software on physical media;
- (b) You must pay any fee associated with the use of a credit card (or other payment mechanism accepted by PaperCut);
- (c) You must pay any fee associated with a bank charge or transfer fee;
- (d) You must pay any fee incurred by PaperCut for any charge back or other payment failure, plus PaperCut's administration fee for dealing with a failed payment (other than where a refund of the Fees is required to be provided by law);

(e) You are responsible to pay all Taxes. All payments under the Agreement must be made free and clear and without deduction for any and all present and future Taxes. Payments due to PaperCut under the Agreement must be increased so that the amounts received by PaperCut, after provision for Taxes and all Taxes on such increase, will be equal to the amounts required under the Agreement as if no Taxes were due on such payments.

7.5 You irrevocably authorize PaperCut to deduct from your credit card (or any debit card accepted by PaperCut) any amount due and payable under this Agreement without further reference to you.

7.6 You must pay a late charge for any failure to make any payment by the date required under the Agreement, calculated daily using a rate that is 4% over the Reserve Bank of Australia's Cash Rate, from the date that the payment first becomes overdue, to the date that the payment is received by PaperCut, both dates inclusive.

7.7 If any Fee, charge or Tax is not received by the required date, PaperCut may suspend access to the Software or suspend or cease providing services until the outstanding amounts (including applicable late charges, damages, costs and expenses) are paid. You do not have any claim for breach of contract or otherwise for any action taken by PaperCut under this clause.

## **8 - TRADEMARKS**

8.1 You acknowledge and agree that PaperCut is the owner and/or licensee of the PaperCut Marks and that all goodwill arising out of your use of the PaperCut Marks under this Agreement shall inure to PaperCut or its licensors, as applicable. You will not acquire any right to, or interest in, any of the PaperCut Marks. You must not at any time or in any way indicate Your ownership of, or any right in, the PaperCut Marks and You must not contest the right of PaperCut, any PaperCut Affiliate or any of their licensors to the use of any of the PaperCut Marks.

8.2 PaperCut will not use Your (or those of Your Affiliates) trademarks, logos or branding without your prior written consent. You give us consent to incorporate any trademark, logo or branding that You provide us into the Software in order to take advantage of the Software features that allow the use of customers' branding. PaperCut may disclose the fact that You (and Your Affiliates) are customers and the nature of Your (and Your Affiliates') use of the Software to third parties in private conversations and documentation, but PaperCut will not use Your name (or the names of Your Affiliates) in PaperCut's general marketing materials or websites etc. without Your prior written consent.

## **9 - PROPRIETARY RIGHTS**

9.1 All Intellectual Property Rights that are created by any person that are adaptations, translations and derivative works in the Software or related documentation, are and shall

remain the exclusive property of PaperCut (and its licensors, if any) or shall vest in or be transferred to PaperCut immediately upon creation, as the case may be.

9.2 Except for the rights expressly granted by PaperCut to you under this Agreement:

(a) PaperCut and its licensors, if any, reserve all right, title and interest in and to the Software or related documentation and all Intellectual Property Rights in them;

(b) No right, title or ownership interest in or to the Software or related documentation whether by implication, estoppel or otherwise, is granted, assigned or transferred to you under or in connection with this Agreement.

9.3 You must not make any unauthorized copies of the whole or part of the Software or related documentation. You acknowledge and agree that the unauthorized disclosure, use or copying of the Software or related documentation may cause PaperCut serious financial loss that may not be adequately compensated by monetary damages. Accordingly, in the event of any unauthorized disclosure, use or copying of the Software or related documentation, you agree that PaperCut shall have the right to seek injunctive relief to stop such unauthorized disclosure, use or copying.

## **10 - CONFIDENTIAL INFORMATION**

10.1 The Recipient must not use any of the Discloser's Confidential Information except in connection with the performance of its obligations specified in this Agreement.

10.2 The Recipient must not disclose the Discloser's Confidential Information to any third party without obtaining the Discloser's prior written consent, provided that the Recipient may disclose the Discloser's Confidential Information to: (a) its employees, agents and contractors, and those of any of its Affiliates, who have entered into a written agreement with the Recipient that is no less protective of the Discloser's Confidential Information than this Agreement provided those persons have a need to know such information for the purposes of this Agreement; (b) to its lawyers, bankers, auditors, accountants and insurers, who have a need to know the information in order to provide professional advice to the Discloser relating to this Agreement.

10.3 You must ensure that each person who is issued with a License Key does not disclose their License Key to any other person.

10.4 The Recipient must use, and must ensure that any person to whom it is permitted by this Agreement to disclose the Discloser's Confidential Information to uses, the same measures to protect the Discloser's Confidential Information as it uses to protect its own confidential information, but in no event less than reasonable measures.

10.5 The restrictions in this clause 10 shall not apply to information that:

(a) Is independently developed by the Recipient without any access to the Confidential Information of the Discloser;

(b) becomes known to the Recipient without restriction, from a third party who, to the Recipient's knowledge, was not bound by a confidentiality agreement with the Discloser, or otherwise prohibited from disclosing the information to the Recipient, or had the right to disclose it;

(c) was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;

(d) was lawfully in the possession of the Recipient before the information was disclosed to it by the Discloser;

(e) Is or becomes in the public domain through no act or omission of the Recipient;

(f) The parties agree in writing is not confidential or may be disclosed; or

(g) Is required to be disclosed under an order or requirement of a court, administrative agency, or other governmental body (but only to the minimum extent required to comply), provided however, that Recipient shall provide prompt notice to Discloser of any potential disclosure and shall use its reasonable efforts to prevent disclosure of such information.

## **Privacy**

10.6 The parties must:

(a) Comply with the requirements of the any privacy law in the country in which the party is located and in any country to which the personal information is to be sent; and

(b) Only use, manipulate, store and handle personal information for the purposes of meeting its obligations under this Agreement.

10.7 You warrant that:

(a) You have obtained the informed consent from each individual about whom PaperCut will obtain personal information from You as a result of this Agreement; and (b) PaperCut, its Representatives and their permitted successors, assignees and sublicenses may use that individual's personal information in any manner that may be reasonably contemplated by this Agreement, including a transfer overseas for the purpose of providing support and error correction services.

## **11 - LIMITATION OF LIABILITY**

11.1 Where you are entitled to a statutory guarantee under s54 to 59 and/or 60 to 62 of the Australian Consumer Law and PaperCut fails to comply with any of those statutory guarantees, the provisions of clauses 11.4 to 11.5 do not apply to that liability.

11.2 Where You are entitled to a statutory guarantee under s54 to 59 of the Australian Consumer Law then to the extent that PaperCut fails to comply with such guarantee, in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, PaperCut's liability for a failure to comply with such statutory guarantee is limited to one or more of the following, at PaperCut's option:

- (a) The replacement of the goods or the supply of equivalent goods;
- (b) The repair of the goods;
- (c) The payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) The payment of the cost of having the goods repaired, unless it is not fair or reasonable for PaperCut to rely on this term of the Agreement.

11.3 Where You are entitled to a statutory guarantee under s60 to 62 of the Australian Consumer Law then to the extent that PaperCut fails to comply with such statutory guarantee, in respect of services which are not services of a kind that are ordinarily acquired for personal, domestic or household use or consumption, PaperCut's liability for a failure to comply with such statutory guarantee is limited to one of the following, at PaperCut's option:

- (a) Supplying the services again; or
- (b) Payment of the cost of having the services supplied again, unless it is not fair or reasonable for PaperCut to rely on this term of the Agreement.

11.4 For any liability that is not covered in clauses 11.1 to 11.3, then to the extent permitted by law, and subject to clause 11.5, PaperCut's liability to You (and Your Affiliates) for any claim whether it be in contract (including under an indemnity), tort (including in negligence), breach of statutory duty or otherwise, arising out of or in connection with the Software, the Premium Upgrade Assurance service, this Agreement or the relationship between the parties, shall be limited to:

- (a) where the claim arises in connection with the Software, one times the Fees paid for the Production License; or
- (b) where the claim arises in connection with the Premium Upgrade Assurance, one times the Fees paid for the Premium Upgrade Assurance during the Premium Upgrade Assurance year in which the claim first arose; or
- (c) For any other claim USD\$10,000.

11.5 PaperCut will not be liable for any loss, damage or expense which is indirect, consequential, special or exemplary damages, nor for any lost profits, lost revenue, lost data or business interruption, even if PaperCut has been advised of, knows of, or should have known of the possibility of such loss, damage or expense.

11.6 You acknowledge and agree that owing to the nature of the Software, PaperCut does not represent or warrant that:

- (a) Access to the Software will be continuously available; or
- (b) The Software will be error free.

11.7 You act as agent for Your Affiliates in respect of this Agreement and are responsible to PaperCut for their acts and omissions.

## **12 - INDEMNIFICATION**

12.1 In addition to any rights You may have under statute, PaperCut undertakes at its own expense to indemnify and defend You or, at PaperCut's option, settle any claim or action brought against You alleging that the use or possession of the Software in accordance with this Agreement infringes any Intellectual Property Right enforceable in the United States, Canada, any country in the EU, Switzerland, Australia, New Zealand, Hong Kong, Singapore and Japan (an "Infringement Claim") and shall be responsible for any losses, damages, expenses or costs (including reasonable legal fees) incurred by, or awarded against You as the result of, or in connection with, any such Infringement Claim, provided that:

- (a) You promptly notify PaperCut of the Infringement Claim in writing, specifying the nature of the claim in reasonable detail and providing access to, and copies of, documents, software any other material, that are relevant to the Infringement Claim, as well as providing prompt access to any Representative who may be relevant to PaperCut's defense of Infringement Claim;
- (b) You do not make any admission of liability, agreement or compromise in relation to the Infringement Claim without the prior written consent of PaperCut;
- (c) You grant PaperCut the sole right to defend, negotiate and settle the Infringement Claim, at PaperCut's expense, or at PaperCut's option, PaperCut may permit you to defend the Infringement Claim in which case:
  - (i) PaperCut will pay any costs associated with your defense, and will provide security for such costs; and
  - (ii) You must follow any reasonable request from PaperCut to avoid, dispute, defend and/or compromise the Infringement Claim;

(d) You provide PaperCut with reasonable assistance, at PaperCut's expense, to defend, negotiate and settle the Infringement Claim.

12.2 PaperCut will have no obligation under this clause 12 or otherwise with respect to any Infringement Claim based upon:

(a) Any use of the Software not in accordance with this Agreement, or documentation provided by PaperCut;

(b) The combination, operation or use of the Software with any other product, equipment, business method, software or data;

(c) Any modification of the Software by any person other than PaperCut or its authorized agents or subcontractors; or

(d) Any use of the Software after PaperCut has provided you a new software version, patch or correction that would have overcome the infringement.

12.3 If any Infringement Claim is made, or in PaperCut's opinion is likely to be made, then PaperCut may (at its sole option and expense) either:

(a) Procure for you the right to continue using the affected Software, or substantially similar software that does not substantially affect the functionality of the Software, in accordance with this Agreement;

(b) Replace or modify the affected Software so that it becomes non-infringing but performs substantially the same functions; or

(c) if neither (a) or (b) is commercially reasonable, as determined in PaperCut's sole discretion, then PaperCut may terminate Your rights to use the affected Software and pay damages of up to an amount of the Fees paid for the license for the Software.

12.4 Subject to any rights that you may have under statute, this clause 12 states PaperCut's entire liability and your sole and exclusive remedy for any claims related to any infringement of the Intellectual Property Rights in respect of the Software.

## **13 - TERMINATION**

13.1 PaperCut may immediately terminate this Agreement for cause by giving you written notice if you:

(a) Breach any of the provisions of clauses 4, 7, 8.2, 9.3, 10 or 14.6;

(b) Breach any other provision of the Agreement and you do not remedy it within 14 days of PaperCut providing you written notice of the breach;



(c) cease to carry on business, are unable to pay Your debts as they fall due, You enter into liquidation or have a controller, managing controller, liquidator or administrator appointed or suffer any similar event in any jurisdiction; or

(d) merge with, sell substantially all of your assets or you are subject to a change of control. A "change of control" shall be deemed to occur when an entity acquires fifty percent (50%) or more of Your voting shares or equity interest or fifty percent (50%) or more of Your assets, in the event of a change of a majority of Your Board of Directors (or majority of the partners if a partnership) or if there is any other effective change of control.

13.2 You may immediately terminate this Agreement for cause by giving PaperCut written notice if PaperCut:

(a) breaches any of the provisions of this Agreement and PaperCut does not remedy it within 30 days of You providing PaperCut written notice of the breach; or

(b) ceases to carry on business, is unable to pay its debts as they fall due, enters into liquidation or has a controller, managing controller, liquidator or administrator appointed or suffer any similar event in any jurisdiction.

13.3 If this Agreement terminates:

(a) any license for Software and its related Premium Upgrade Assurance terminates immediately;

(b) each party shall immediately return to the other (or at the other party's request destroy) any of the other's Confidential Information;

(c) You must ensure that all copies of the Software and related documentation are uninstalled or deleted within 14 days of the date this Agreement is terminated.

13.4 Any termination of this Agreement shall not prejudice, limit or restrict any other rights or remedies either party may have arising prior to such termination. To the extent permitted by law, PaperCut shall be under no obligation to refund any amounts paid by You for any of the Software or Premium Upgrade Assurance services that have been provided prior to any termination of this Agreement.

## **14 - GENERAL Notices**

14.1 Any notice that is given under this Agreement:

(a) by PaperCut; may be:

(i) posted to You;

(ii) emailed to You at any email address provided by You;

(iii) included on any invoice (which may be emailed or posted to You); or

(iv) posted on the Website. You must review the Website regularly for notices.

(b) by You; must be posted to PaperCut at the address stated on the latest invoice.

14.2 A notice is deemed to be received:

(a) when posted from Australia to an address in Australia; within 3 business days of the date when it was posted;

(b) when posted from an address outside of Australia, within 7 days of the date when it was posted; or

(c) when emailed; within 1 business day of the date that the email was sent, provided no notice of failure has been received by the sender;

(d) when posted on the Website, within 3 business days of the date it was posted.

14.3 Any notice that is issued under the Australian Consumer Law, may be issued in accordance with the provisions of the Australian Consumer Law. Relationship of Parties

14.4 The parties to this Agreement are independent contractors. Nothing in this Agreement shall be deemed to neither create an agency, employment, partnership, fiduciary or joint venture relationship between the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party.

Compliance with Laws

14.5 You agree to comply with all laws which are relevant to You performing its obligations under this Agreement. Assignment

14.6 You must not assign or transfer this Agreement or any rights or obligations under this Agreement, in whole or part, without the prior written consent of PaperCut. 14.7 PaperCut may assign or transfer this Agreement, in whole or part, without Your consent to any PaperCut Affiliate or in connection with a merger, acquisition, or purchase of fifty percent (50%) or more of its assets. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. PaperCut may assign or transfer all or part of any of its rights to receive any Fees and Taxes or other monies due under this Agreement, to any person without Your consent. Notwithstanding clause 10, PaperCut may disclose any of Your Confidential Information which is reasonably necessary to affect any assignment or transfer.

### **Waiver**

14.8 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial

exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### **Remedies**

14.9 Except as specifically provided otherwise in this Agreement, the rights and remedies provided under this Agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law.

### **Severability**

14.10 If any part of this Agreement is determined to be invalid, illegal or unenforceable by any court or competent authority, such part will be severed from the remainder of the Agreement and the remaining provisions will continue in force.

### **Force Majeure**

14.11 Except for Your obligations to pay PaperCut under this Agreement, neither party shall be in breach of this Agreement nor liable to the other party for any failure or delay in performance caused by events beyond its reasonable control.

### **Agreement**

14.12 All clauses which naturally survive termination of the Agreement, including clauses 4.6, 8.1, 9, 10, 11, 13.3(b), 13.4 and 14, will survive termination of this Agreement.

14.13 The parties are entitled to rely on any notice or communication in electronic format, including any facsimile or email, that on its face appears authentic, and that has the purported author's name on it to the same extent as if it were a document written by the author. The parties consent to this Agreement being signed or varied through electronic communication.

14.14 To the extent permitted by law:

(a) PaperCut excludes any warranty or guarantee not expressly stated in this Agreement, whether express, implied or statutory, including any guarantees or warranties of acceptability and fitness for a particular purpose;

(b) this Agreement constitutes the entire agreement between the parties regarding the subject matter and supersedes all prior or contemporaneous agreements, arrangements, understandings and communications, whether written or oral.

### **Export**

14.15 You acknowledge and agree that the Software may be subject to applicable export and import laws. You agree not to export the Software or any direct product thereof, directly or indirectly in violation of these laws, nor will they be used for any purpose prohibited by these laws, including nuclear, chemical or biological weapons proliferation.

### **US Government Rights**

14.16 If You are a US civilian agency, the US Government acquires certain parts of this commercial computer software and/or commercial software documentation and other technical data subject to the terms of this EULA as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation (FAR) and its successors. If acquired by or on behalf of any agency within the Department of Defense (DOD), the US Government acquires certain parts of this commercial computer software and/or commercial software documentation subject to the terms of this EULA as specified in 48 C.F.R. 227.7202-3 of DOD FAR Supplement (DFARS) and its successors. The US Government Rights clause is in lieu of, and supersedes any other FAR, DFARS or other clause or provision that addresses US Government rights in computer software or technical data.

### **Governing Law**

14.17 This Agreement will be governed by the laws of the State of Victoria, Australia, without regard to its conflict of law principles. The parties submit to the exclusive jurisdiction of the court in the State of Victoria, Australia.