

**1 Definitions and Interpretation**

- 1.1 In these Terms and Conditions:
  - 1) Agreement means the contract between AbiBird and Hirer in relation to the hire of Equipment, which is governed by these Terms and Conditions together with the Hirer's Trade Account Application and quotation provided by AbiBird (if any).
  - 2) AbiBird means AbiBird a division of ATF Services Pty Ltd [ABN: 54 060 402 048].
  - 3) Business Hours are 9.00am to 4.00pm on weekdays other than public holidays
  - 4) Cycle Billing Period means the period between the expiry of the Initial Period and the return or collection of the Equipment, during which the Hirer will be billed on a periodic basis for the hire of the Equipment. The Cycle Billing Period will commence automatically following the expiration of the Initial Period, and will continue indefinitely until the Equipment is returned or collected by the Hirer.
  - 5) DPA means the applicable privacy and data protection legislation in force in Australia from time to time.
  - 6) Delivery of the Equipment is deemed to have occurred when it is collected by the Hirer or transported to a location at the request of the Hirer and Delivered has a corresponding meaning.
  - 7) Equipment means the goods hired by the Hirer from AbiBird in accordance with this agreement.
  - 8) Hirer means the person, company or other legal entity hiring the Equipment from AbiBird. Where the context permits, it includes the Hirer's employees and contractors.
  - 9) Initial Period means the fixed initial hire period agreed between AbiBird and Hirer together with any agreed extension to this period.
  - 10) Rates means the rates notified by AbiBird to Hirer from time to time.
  - 11) Rental Period means: (a) the Initial Period; and (b) the Cycle Billing Period.
  - 12) Use means use, installation, removal, storage, maintenance or transport by or on behalf of Hirer.
- 1.2 Every provision of this Agreement is independent of the others. Any provision which is prohibited or unenforceable in any jurisdiction will be deemed removed to the extent of the prohibition or unenforceability without invalidating the remaining provisions. Unless stated to the contrary, the rights under this Agreement are in addition to any rights that may be conferred by general law.
- 1.3 This Agreement will be governed by the laws of Australia and AbiBird and the Hirer submits to the non-exclusive jurisdiction of the courts of that place.
- 1.4 These Terms and Conditions supersede all previously issued Terms and Conditions. AbiBird is not bound by any terms and conditions contained in any document issued by the Hirer whether issued before or after this Agreement.

**2 Rates and Rental Period**

- 2.1 During the Rental Period Hirer must pay AbiBird a hire fee calculated in accordance with the Rates.
- 2.2 The hire fee must be paid in the manner and in accordance with the payment terms specified on any invoice issued by AbiBird or otherwise notified to the Hirer from time to time. AbiBird may require payment of some or all of the hire fee prior to Delivery. The Hirer must notify AbiBird within 7 days of any errors with the invoice.
- 2.3 Not receiving an invoice will in no way relieve the Hirer of its responsibility for the payment of amounts due. Failure to pay amounts due within seven (7) days of a debt becoming due for payment or such term otherwise agreed to in writing by AbiBird will be considered a breach of this Agreement. The Hirer must pay AbiBird on demand on a full indemnity basis, all costs incurred in recovering any amount owed to AbiBird by the Hirer.
- 2.4 The Hirer is not permitted to claim a reduction in hire fees for Equipment returned before the end of the Initial Period, and except as provided for in clause 8.1, AbiBird will not refund any hire fees prepaid by Hirer for any period outside of the Rental Period.
- 2.5 The Hirer must not deduct any part of the hire fee as retention money.
- 2.6 The hire fees, and all other considerations payable under this Agreement, do not include GST. If a supply made under this Agreement, or as a result of any breach of a term of this Agreement, is subject to GST:
  - 1) the recipient of that supply must pay the supplier an amount equal to the GST payable by the supplier, at the same time as the consideration for that supply is given; and
  - 2) the supplier agrees to give the recipient a tax invoice for that additional amount upon payment.
- 2.7 The Hirer agrees to pay AbiBird a service charge on all past due balances at the rate of 0.5% per month or part thereof from the due date for payment until the payment is made.
- 2.8 Failure by the Hirer to comply with the terms and conditions of payment as specified on the invoice will result in AbiBird outsourcing debt recovery services at the expense of the Hirer. The Hirer must pay AbiBird the debt recovery fees in addition to the outstanding invoice amount.
- 2.10 The Hirer is liable for all costs or expenses which may arise as a direct or indirect result of the failure to comply with the terms and conditions of payment as specified on the invoice.

**3 Delivery, Pick up, Installation and Removal**

- 3.1 If delivery is applicable, the Hirer must retain AbiBird to deliver the Equipment.
- 3.2 The Hirer accepts the risk in the Equipment from pick up to return of the Equipment and is responsible for any loss or damage to the Equipment due to any cause except to the extent otherwise set out in this Agreement.
- 3.3 If delivery is applicable, the Hirer retains AbiBird to deliver, pick up, install, or remove the Equipment and to act as the agent of the Hirer. Delivery, installation, dismantling and pickup charges are extra and will be quoted separately.
- 3.4 If AbiBird is delayed from delivering or removing the Equipment from any location for any reason beyond its reasonable control, it may charge the Hirer additional delivery charges. The additional delivery charges will be calculated for every period of 15 minutes (or part thereof) at the rate of \$100 per hour.
- 3.5 The Hirer must return the Equipment at the end of the Initial Period or will be liable to pay for the Equipment at cycle billing rates until the Equipment is returned.
- 3.6 AbiBird will issue the Hirer a written confirmation of expiry of the contract once the Equipment is returned and "off hired" (which the Hirer should retain).
- 3.7 The Hirer is liable for all costs, expenses, damages or loss (including consequential loss) which may arise as a result of the delivery, pick up, installation or removal of the Equipment by AbiBird as directed for the Hirer, and whether caused by the Hirer, AbiBird, or any other person.

**4 Receipt of Equipment**

- 4.1 On Delivery of the Equipment, Hirer must satisfy itself that:
  - 1) it has received the Equipment in good condition in the quantity ordered;
  - 2) it, and any employee or contractor using the Equipment, has been fully instructed in the use of the Equipment and understands its proper use and means of installation and removal; and
  - 3) the Equipment is suitable and fit for the purpose for which the Hirer intends to use it, and must notify AbiBird within 48 hours of the Delivery of the Equipment if it is not so satisfied. Failing such notification, the Hirer will be deemed to have accepted the Equipment in the condition in which it was provided and as suitable and fit for the purpose for which Hirer intends to use the Equipment. If the Hirer is a consumer and Directive 2011/83/EC applies, the Hirer acknowledges without prejudice to any other rights it may have that it will lose its right to cancel the Agreement thereunder on the earlier of 14 days of its conclusion or the expiration of 48 hours following the Delivery of the Equipment.
- 4.2 Hirer acknowledges that it is responsible for properly securing the Equipment for the purpose of transportation so as to ensure its safe transport to and from the location where the Equipment will be used by Hirer.

**5 Use of the Equipment**

- 5.1 The Hirer must ensure that the Equipment is Used strictly in accordance with AbiBird's instructions and any procedures recommended by AbiBird from time to time and the Hirer indemnifies AbiBird from any failure to comply with such instructions and procedures and unintended Use of the Equipment.
- 5.2 The Hirer must at all times keep the Equipment in good condition and must not, without AbiBird's prior written consent, alter or make additions to the Equipment, or deface, remove or conceal any AbiBird logo, identifying mark or number, or indication of AbiBird's ownership of the Equipment.
- 5.3 The Hirer must at all times ensure that the Equipment is Used in a safe manner, and must not deliberately damage, abuse or mistreat the Equipment or allow Equipment to be deliberately damaged, abused, or mistreated.
- 5.4 If any damage, loss, theft or destruction of the Equipment occurs, whether the Hirer was responsible or not, the Hirer must immediately notify AbiBird and provide full details of the damage, loss theft or destruction.
- 5.5 The Hirer must ensure that Use of the Equipment is at all times strictly in accordance with:
  - 1) all applicable laws including relevant legislation in relation to privacy, data storage, communication and transmission, planning, environment or health and safety, and
  - 2) any relevant industry usage, custom and standards for goods similar to the Equipment.
- 5.6 The Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the Use of the Equipment, including its installation or removal. Without limiting the Hirer's obligations under this clause, the Hirer must obtain all permits required under any relevant legislation, and must ensure that its personnel are appropriately inducted, trained and supervised so as to ensure the safe and lawful Use of the Equipment.
- 5.7 At all times during the Rental Period, the Hirer must store the Equipment safely and securely.
- 5.8 The Hirer will allow AbiBird to enter the Hirer's premises and inspect and maintain the Equipment from time to time during the Rental Period during normal working hours. If we cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply.

**6 Unusable, Damaged and Missing Equipment**

- 6.1 If the equipment breaks down, is unusable or unsafe during the Rental Period, the Hirer must:
  - 1) Immediately stop Using the Equipment and notify AbiBird;
  - 2) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - 3) take all steps necessary to prevent any further damage to the Equipment itself; and
  - 4) not repair or attempt to repair the Equipment without AbiBird's written consent.
- 6.2 Except where clause 6.3 applies, upon receiving notice from the Hirer under clause 6.1, AbiBird will:
  - 1) Take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Hirer; and
  - 2) Not impose Rates for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment except where a long distance maintenance and repair fee applies as per clause 6.4.

- 6.3 If the Equipment has broken down or become unsafe to use as a result of the Hirer's acts or omissions (or the acts or omissions of the Hirer's employees or contractors or agents) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Rental Period, The Hirer will be liable for:
  - 1) Any costs incurred by AbiBird to recover and repair or replace the Equipment; and
  - 2) The Rates for that portion of the Rental Period during which the Equipment is being recovered, repaired or replaced, except where the Hirer has paid an insurance reduction, in which case the Hirer's liability shall be in accordance with clause 7.
- 6.4 If Equipment is returned or collected in a condition which in the reasonable opinion of AbiBird renders it unusable for hire, Hirer must pay AbiBird on demand the cost of replacement or repair of the Equipment calculated in accordance with the relevant Damaged & Lost Materials retail price. In no circumstances will title to the Equipment, or any part of it pass to the Hirer.
- 6.5 In addition to any other obligation the Hirer may have to AbiBird, the Hirer will be liable for all costs, expenses, damages or loss (including consequential loss), incurred by AbiBird arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or is missing.

**7 Insurance Reduction**

- 7.1 When an insurance reduction charge (at AbiBird's then current rate) is paid by the Hirer, AbiBird will not make a claim against the Hirer for any accidental loss or damage to the Equipment during the period covered by the charge. This insurance reduction is conditional upon the Hirer paying a \$30 excess per claim event, and only applies when the Hirer has Used the Equipment in accordance with this Agreement.
- 7.2 For the avoidance of doubt clause 7.1 does not apply to prevent AbiBird from making a claim for loss and damage to the Equipment in circumstances where:
  - 1) loss or damage occurred in part or whole as a result of the negligent act or omission of the Hirer;
  - 2) there was misuse or abuse of the Equipment caused or permitted by the Hirer;
  - 3) mysterious disappearance of the Equipment or the Equipment is not returned to AbiBird;
  - 4) loss or damage from use in violation of regulations by the Hirer.

**8 AbiBird's Rights**

- 8.1 AbiBird may terminate this Agreement and recover the Equipment at any time on 7 days written notice to the Hirer. If AbiBird exercises this termination right, AbiBird will refund the Hirer for any hire fees received by AbiBird which relate to Equipment hired outside the Rental Period, less a deduction for reasonable expenses incurred by AbiBird in connection with the recovery and/or transport of the Equipment.
- 8.2 AbiBird may enter any premises where the Equipment or any part of it is, or believed to be located, and the Hirer grants a licence to do so for the purpose of:
  - 1) inspecting or testing the Equipment;
  - 2) protecting AbiBird's rights or interest in the Equipment;
  - 3) ensuring compliance with any law, including any law relating to health and safety; or
  - 4) exercising its right to take possession or control of the Equipment.
- 8.3 AbiBird does not own the data and information collected under this Agreement but may disclose data and information where:
  - 1) it is subject to a warrant or court order and is sought by a law enforcement agency;
  - 2) it is requested by a law enforcement agency but is not subject to a court or warrant and AbiBird believes the request to be reasonable;
  - 3) it is sought by specified persons, is subject of an approved freedom of information request; and is readily retrievable;
  - 4) it is considered personal data under the DPA and is sought by that person; or
  - 5) AbiBird forms the view that it is otherwise reasonable to do so.
- 8.4 Notwithstanding clauses 8.3 AbiBird may choose not to disclose or to limit the disclosure of the data where disclosure could breach any relevant privacy legislation in relation to other persons who are the subject of the data.
- 8.5 If the Hirer in any way fails to perform, breaches any provision of this Agreement, becomes insolvent, AbiBird may at its discretion do all or any of the following:
  - 1) terminate this Agreement upon 7 days written notice;
  - 2) take possession of the Equipment, holding the Hirer fully liable for all hire fees; and
  - 3) require the Hirer to pay liquidated damages equal to 2 weeks hire fees (which the parties agree to be reasonable estimate of the cost incurred by AbiBird in order to retake possession of the Equipment).
- 8.6 Nothing in this clause 8 limits any rights AbiBird may have:
  - 1) in respect of the Equipment;
  - 2) against the Hirer; or
  - 3) against any other person, at any time.

**9 Warranties and guarantees**

- 9.1 The Hirer acknowledges that no representations regarding the suitability or effectiveness of the Equipment have been made by AbiBird and that the Hirer has relied on its own judgement when hiring the Equipment.
- 9.2 AbiBird acknowledges that the Hirer may be a consumer for the purposes of applicable law, with the consequence that:
  - 1) Certain warranties or conditions may be implied into this Agreement; and
  - 2) Certain guarantees may be conferred on the Hirer and certain rights and remedies may be conferred on the Hirer, which cannot be excluded, restricted or modified. If so, then to the maximum extent permitted by law, AbiBird's liability to the Hirer is limited to AbiBird's option to:
    - 3) in the case of goods:
      - a. replacement or repair of the goods; or
      - b. payment of the cost of replacing or repairing the goods; and
    - 4) in the case of services:
      - a. resupply of the services; or
      - b. payment of the cost of resupplying the services.
- 9.3 Subject to clause 9.1 and to the maximum extent permitted by law:
  - 1) AbiBird excludes all conditions, warranties, guarantees or representations (expressed or implied) to the Hirer in relation to this Agreement or its subject matter, including all warranties and guarantees as to the quality, suitability or fitness of the Equipment for any particular purpose;
  - 2) AbiBird is not responsible to the Hirer for any loss (including consequential loss), damage, or injury, caused by, resulting from or in any way connected with this Agreement, in excess of that set out in clause 9.2 of this Agreement;
  - 3) AbiBird will not be responsible for failure or delay in Delivery, pick up, installation or removal and will have no liability to Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay; and
  - 4) AbiBird does not warrant the suitability or fitness for purpose of the Equipment and will not be responsible for any failure (however caused) of the Equipment to operate satisfactorily.

**10 Liability and indemnity**

- 10.1 Hirer is liable for all costs, expenses, damages, claim including injury claim, or loss (including consequential loss) caused by the Hirer, arising directly or indirectly out of the Use of the Equipment.
- 10.2 To the maximum extent permitted by law, the maximum amount recoverable by the Hirer from AbiBird under or in connection with this Agreement is limited to the hire fees paid by the Hirer to AbiBird under this Agreement.
- 10.3 The Hirer agrees to indemnify and keep indemnified AbiBird and AbiBird's employees, agents and contractors from all damages, suits, actions, claims and demands which they may suffer or incur, arising either directly or indirectly out of the Use of the Equipment.
- 10.4 The Hirer must not do or allow to be done any act matter or thing which may invalidate or prejudice any:
  - 1) Insurance policy effected by AbiBird,
  - 2) AbiBird defence or prosecution of any claim, or
  - 3) right AbiBird may have against any person.

**11 Title and Security**

- 11.1 Title to the Equipment remains with AbiBird at all times. The Hirer must not grant or allow to subsist any security interest or encumbrance over the Equipment or allow AbiBird's title to be adversely affected in any way.
- 11.2 The Hirer must not make any representation or do anything that may tend to induce any person to believe the Equipment is not the property of AbiBird. If possession of the Equipment is taken by any third party for any reason, The Hirer authorises AbiBird to take any action it deems necessary to protect its rights in the Equipment, at the cost of Hirer.
- 11.3 If AbiBird determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, Hirer agrees upon request to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which AbiBird considers necessary for the purposes of:
  - (1) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (2) enabling AbiBird to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by AbiBird; and
  - (3) enabling AbiBird to exercise rights in connection with the security interest, and, the Hirer expressly waives any right it may have under PPSA section 175 to be given notice in relation to any registration event.
- 11.4 AbiBird is not obliged, before exercising a right under this Agreement or conferred by law, to give the Hirer any notice or demand, or allow a lapse of time, that is required by law unless the notice, demand or lapse of time cannot be excluded. A reference to a notice under this clause includes any notice under the PPSA.
- 11.5 AbiBird is not obliged, before exercising a right under this Agreement or conferred by law, to give the Hirer any notice or demand, or allow a lapse of time, that is required by law unless the notice, demand or lapse of time cannot be excluded.

**12 Location and Use of Equipment**

- 12.1 The Hirer is responsible for selecting the site at which the Equipment is to be installed and for obtaining all necessary permits or approval required for the use of the equipment at that site.
- 12.2 The Hirer must expressly inform AbiBird of the location of the Equipment during the Rental Period.
- 12.3 Hirer must not:
  - 1) part with possession of the Equipment;
  - 2) allow any other person to use the Equipment; or
  - 3) permit removal of the Equipment from the location at which Hirer represented it would be located; without the prior written consent of AbiBird.
- 12.4 The Hirer must store the Equipment in a safe place, and do all other things necessary to ensure the continued safety and preservation of the Equipment.

**13 Collection, Storage and Use of Information**

- 13.1 The Hirer authorises AbiBird to collect, store, use and disclose information about the Hirer for the purposes related to the provision of hire services (including whether to allow credit on the Hirer's account), reporting information to any credit agency, marketing AbiBird's goods and services, and enforcing any rights under this Agreement.
- 13.2 The Hirer expressly consents to receiving commercial electronic messages from AbiBird and its agents. Hirer may withdraw its consent at any time by notifying AbiBird in writing.
- 13.3 Where personal information is collected, stored or used by AbiBird, it will be dealt with in accordance with the DPA. In particular, any individual may access personal data held about him or her (subject to the permissible limitations contained in the DPA), and may request correction of that personal information. Further information about the handling of personal information including requests for access to personal information may be obtained from AbiBird's Privacy Officer.
- 13.4 AbiBird and its agents will comply with the DPA.
- 13.5 AbiBird is not the owner of the data and information and while it agrees to collect and store the data and information it has no liability to Hirer arising out of the loss, damage or destruction of the information and data.

**14 Hirer's Warranties**

- 14.1 Any person signing any document on behalf of the Hirer in respect of the hire of the Equipment warrants that they:
  - 1) have the Hirer's authority to contract with AbiBird on the Hirer's behalf; and
  - 2) have been authorised by the Hirer to bind the Hirer to hire the Equipment under this Agreement, and agrees to indemnify AbiBird against all losses, costs and claims incurred by AbiBird if this is not the case.
- 14.2 If there is any variation to the legal structure or management of the Hirer, including (but not limited to) change in directors, senior management or trustee, or change in partnership or conversion to or from a company or to or from a trust, the Hirer must notify AbiBird in writing within 7 days providing details of that change.
- 14.3 The Hirer may not assign in whole or in part this Agreement or any benefit under this Agreement without AbiBird's prior written consent.

**15 Changes to Terms and Conditions**

- 15.1 AbiBird may amend these Terms and Conditions at any time by publishing the amendments on its website [www.AbiBird.com.au](http://www.AbiBird.com.au) or otherwise notifying the Hirer in writing. Such amended Terms and Conditions will govern each subsequent hire agreement between AbiBird and the Hirer.

**16 General**

- 16.1 Any failure of AbiBird to insist upon strict performance by the Hirer of the conditions and terms of this Agreement will not be construed as a waiver of AbiBird's right to demand strict compliance.
- 16.2 AbiBird may exercise its rights under this Agreement personally or through its agents
- 16.3 All products and services are supplied according to AbiBird's "Terms and Conditions" and these Conditions of Supply. A copy of AbiBird's "Terms and Conditions" is available on our website [www.AbiBird.com.au](http://www.AbiBird.com.au) and if there is any conflict between AbiBird's "Terms and Conditions" and these Conditions of Supply, these Conditions of Supply will take precedence.
- 16.4 The Hirer must have an account with AbiBird which is open for trade, otherwise a Trade Account Application must be completed by the Hirer and approved by AbiBird prior to hire.
- 16.5 Unless otherwise agreed in writing, full payment is required prior to provision of the products and services.
- 16.6 Payments may not be prorated across the term of the hire period and no retention monies may be deducted.
- 16.7 Work cannot be booked until confirmation to proceed is given.

**17 Quote**

- 17.1 Each AbiBird quote ("Quote") is valid for a period of 30 DAYS ONLY.
- 17.2 The Quote is subject to availability, and to change depending on actual quantities required and site conditions.
- 17.3 The Quote is applicable for the named site only.
- 17.4 A request for delivery and/or installation or a direction to perform other works including variations pursuant to the Quote will be deemed to be an acceptance of the Quote, these Conditions of Supply and AbiBird's "Terms and Conditions".

**18 Delivery / Installation / Removal**

- 18.1 Where the delivery is to be made by mail then the price quoted shall include mailing costs. All mailing costs for the return of the Equipment are to be paid by the Hirer.

**19 Rates**

- 19.1 Sensor devices will be invoiced on a minimum 28 day cycle in advance.
- 19.2 Unless otherwise notified at least 1 week beforehand, AT EXPIRATION OF THE INITIAL PERIOD, the hire rate will revert to AbiBird's then current cycle billing rates. Any rates agreed after the expiration of the Initial Period will not be back dated.
- 19.3 The cycle billing rates will be the cycle billing rates set out in the quotation and if there are no cycle billing rates set out in the quotation will be equal to the rates for the Initial Period when calculated on a daily basis.
- 19.4 All rates (including labour rates and cycle billing rates) are subject to change by AbiBird.
- 19.5 The insurance reduction is only applicable if the insurance reduction charge is paid prior to the claimable event.

**20 Sensor Devices related products / services**

- 20.1 The Hirer must allow access for approved AbiBird employees to carry out any maintenance as and when required to the product during the rental period. AbiBird will notify the Hirer to gain access.

**21 Privacy Laws**

- 21.1 The Hirer is responsible for complying with all laws relating to privacy and indemnifies AbiBird against any claim made against AbiBird as a result of the breach of those laws.

**22 Notice**

- 22.1 All communications between the parties about this Agreement shall be in writing and delivered by hand or served by pre-paid first class post or sent by fax:
  - 1) in case of communications to AbiBird : to its registered office or such changed address as shall be notified to the Hirer by AbiBird; or
  - 2) in the case of communications to the Hirer: to the registered office of the addressee (if it is a company) or in any other case to any address the Hirer set out in any document which forms part of this Agreement or such other address as shall be notified to AbiBird by the Hirer.
- 22.2 Communications shall be deemed to have been received:
  - 1) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - 2) if delivered by hand, on the day of delivery; or
  - 3) if sent by fax on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

**23 Acknowledgment:**

I / we acknowledge that I have read and agree to the above AbiBird Terms & Conditions

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 Company / Account Name:  
 -----  
 Acknowledged by (Name & Title)  
 -----  
 Signature  
 -----  
 Date