



General Terms & Conditions

Hardware Product supply
Hardware Installation Service
Software Development service
Developed Software Support service
Licensed Software supply
Licensed Software Support Plan supply
Software Installation service
Consultancy service
Hosting service supply
Telecommunications Carriage service supply

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context requires otherwise:

Acceptance Test Plan or **Test Plan** means the document (developed by Cirrus) which specifies the test cases and scripts that will be executed to verify whether the Developed Software meets the Requirements Definition.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the location where Hardware Products, Software or the Services are delivered.

Cirrus means Cirrus Networks Holdings Ltd ABN 98 103 348 947 and all controlled entities thereof.

Claim means any claim, action, proceeding or investigation of any nature or kind and includes the allegation or threat of a claim.

Commencement Date means the date determined in accordance with clause 2.

Confidential Information means the following information, regardless of its medium of form, whether or not it is marked as confidential, and whether the recipient of the information became aware of it before or after the Commencement Date:

- (a) the existence and terms of this Agreement;
- (b) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential, but does not include information that:
 - (a) is in or enters the public domain through no fault of the receiving party or any of its Personnel;
 - (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence; or
 - (c) is or was developed by the receiving party independently of the disclosing party and any of its Personnel.

Consultancy Services means the consulting or related services (if any) described in the Proposal which Cirrus must supply to the Customer.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the Consumer Price Index, Australia, All Groups, Weighted Average of Eight Capital Cities, published by the Australian Bureau of Statistics and, if that index ceases to be published, an alternative consumer price index nominated by Cirrus.

Customer means the company, person, or other entity named as the customer or client in the Proposal.



Defect means any characteristic which makes the whole or any part of the Hardware Product, Software or Services materially inoperable or materially inconsistent with the Requirements Definition, relevant Documentation or this Agreement.

Deliverable means any item or material which is brought, or required to be brought into existence by or on behalf of Cirrus, and delivered to the Customer under this Agreement.

Delivery Date means the date any Hardware Product is scheduled for delivery or the date on which Cirrus makes any Software available to the Customer, as specified in the Proposal or as otherwise agreed between the parties from time to time.

Developed IP means all present or future Intellectual Property Right which is brought or required to be brought into existence by or on behalf of Cirrus under this Agreement.

Developed Software means the software which the Proposal requires Cirrus to develop as part of the Software Development Services (excluding any Licensed Software or software which is identified as third party software that is not being licensed to the Customer by Cirrus).

Documentation means any user manual or other operational documentation provided by (as applicable):

- (a) the manufacturer of the Hardware Products;
- (b) the licensor of the Licensed Software; or
- (c) Cirrus for the Developed Software,

and any modifications of such documentation.

Existing IP of a party, means any Intellectual Property Right that:

- is in existence at the date of this Agreement; or
- comes into existence after the date of this Agreement other than in connection with this Agreement.

Fees means the fees payable by the Customer to Cirrus for the supply of the Hardware Products, Services and Software as specified in the Proposal and also includes any expenses payable by the Customer as required under this Agreement.

Force Majeure Event means any circumstance not within the reasonable control of the affected party, to the extent that the circumstance, or its effect upon the affected party, could not have been avoided, prevented or circumvented despite the exercise of reasonable diligence by the affected party.

Government Authority means any government, governmental, semi-governmental, administrative, or judicial body, agency or entity.

GST has the meaning given to it in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hardware Installation Service means installation, connection and/or commissioning service for the Hardware Products (if any) described in the Proposal which Cirrus must supply to the Customer.

Hardware Products means the particular computer hardware and related accessories (if any) described in the Proposal which Cirrus will supply to the Customer.

Harmful Code means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alternation, denial of service, unauthorised access to, or disclosure, destruction or corruption of, information or data.

Hosting Services means any shared, reseller, virtual, or dedicated service used to store and deliver web-based content, or related services (if any), described in the Proposal which Cirrus must supply to the Customer.

Implementation Plan or **Migration Plan** means the document (developed by Cirrus) which specifies the steps in which the implementation and migration will be completed and resources required for each step.

Insolvency Event, in relation to a party (**Insolvent Party**), means any one or more of the following:

- (a) the Insolvent Party ceases or takes steps to cease to conduct its business in the normal manner;
- (b) the Insolvent Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) the Insolvent Party is unable to pay its debts when they are due or is deemed under the Corporations Act to be insolvent;



(d) a liquidator or provisional liquidator is appointed to the Insolvent Party or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of the Insolvent Party;

(e) an application or order is made or a resolution is passed for the winding up of the Insolvent Party; or

(f) any act or event analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (e) of this definition.

Intellectual Property Rights means all intellectual property rights, including without limitation:

(a) patents, inventions, copyright, registered designs, trade marks, rights in circuit layouts and the right to have confidential information kept confidential; and

(b) any application or right to apply for registration of any of those rights.

Licensed Software means the third party licensed software (if any) identified in the Proposal, which Cirrus must supply to the Customer.

Licensed Software Licence means the relevant end user licence terms applicable to the Licensed Software.

Licensed Software Support Plan means a software support plan for Licensed Software (if any) as described in the Proposal which Cirrus must supply to the Customer.

Loss means any loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind.

Milestone Date means in respect of a specific task which is to be performed by Cirrus as part of the Services, the target date for the performance of the relevant task.

Personal Information has the meaning given to it in the Privacy Act.

Personnel means, in respect of a party, its officers, employees, agents, contractors and subcontractors.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

(a) the Privacy Act;

(b) all applicable laws affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and

(c) any legally binding ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time.

Project Management Plan means the document (developed by Cirrus) which specifies the services, materials and personnel to be contributed by each party, the responsibilities of each party, and the timeframes and milestones relating to the Services, Hardware Products or Software to be provided under this Agreement.

Proposal means the written proposal which has been accepted by the Customer that describes (as applicable):

(a) the Hardware Products;

(b) the Hardware Installation Service;

(c) the Software Development Service;

(d) the Developed Software Support Service;

(e) the Software Installation Service;

(f) the Licensed Software Licence;

(g) the Licensed Software Support Plan;

(h) the Hosting Service;

(i) the Telecommunications Carriage Service; or

(j) the Consultancy Service,

which are to be supplied by Cirrus to the Customer under this Agreement. To the extent the Proposal includes any pre-sales information which Cirrus may have provided to the Customer, such information does not form part of this Agreement.

Requirements Definition means the document which specifies the functional and technical requirements for the Hardware Products, Software or Services to be provided under this Agreement.

Services means, in respect of a Proposal:



- (a) the Hardware Installation Services;
- (b) the Software Installation Services;
- (c) the Software Development Services;
- (d) the Developed Software Support Services;
- (e) the Consultancy Services;
- (f) the Hosting Services;
- (g) the Telecommunications Carriage Service; and
- (h) any other services which the Proposal requires Cirrus to provide to the Customer.

Site means the location or locations at which the Hardware Products will be delivered and the Services will be provided (if applicable) as specified in the Proposal.

Software means the Licensed Software or Developed Software as the context requires.

Software Development Services means the development of software or related services (if any) described in the Proposal which Cirrus must supply to the Customer.

Software Installation Service means the Software Installation Service (if any) for the relevant Licensed Software or the Developed Software as described in the Proposal, which Cirrus must supply to the Customer.

Tax means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a Government Authority, together with any related interest, penalty or fine, including in respect of GST, but excluding income or capital gains tax.

Telecommunications Carriage Services means the telecommunication services or related services (if any), described in the Proposal which Cirrus must supply to the Customer.

Term has the meaning provided by clause 3.

Warranty Period means unless specified otherwise in the Proposal, in respect of any Developed Software, 1 month from the Delivery Date and in respect of any Services, 1 month from the date the relevant Services were performed.

1.2 Interpretation

- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) a clause or schedule, is a reference to a clause of or schedule to this Agreement;
 - (iii) a statute, ordinance, code or other law, includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a person or entity, includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (v) a day or a month, means a calendar day or calendar month; and
 - (vi) money (including '\$', 'AUD' or 'dollars'), is to Australian currency;
- (b) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (c) headings are for convenience only and do not form part of this Agreement or affect its interpretation;
- (d) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (e) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day.

1.3 Interpretation – order of precedence

This Agreement is comprised of the following documents which apply in the following order of precedence:

- (a) the Proposal;
- (b) the Project Management Plan (if applicable); and
- (c) these terms and condition,

with the result that any inconsistency between these documents will be resolved in favour of the earlier listed documents, to the extent of any conflict or inconsistency.



2 Commencement Date

2.1 Customer's acceptance of Proposal

Subject to clause 2.2, the Commencement Date is the date the Customer notifies Cirrus of its acceptance of the Proposal.

2.2 Third Party Supplier acceptance

Where the Proposal is expressed to be subject to be conditional on a third party agreeing or providing its consent to a particular matter:

- (a) the provision of the Proposal by Cirrus to the Customer is deemed to be an invitation to treat;
- (b) the Customer's acceptance of the Proposal will not form a binding agreement between the Customer and Cirrus, but instead is an offer capable of acceptance by Cirrus;
- (c) following acceptance of a Proposal by the Customer, Cirrus will give notice to the Customer once that third party's agreement or consent has been given and on such date, an agreement is formed between Cirrus and Customer; and
- (d) the date Cirrus notifies the Customer of the third party's agreement or consent is the Commencement Date.

3 Term

This Agreement commences on the Commencement Date and will continue until the parties have completed the performance of their obligations under this Agreement, unless terminated earlier in accordance with this Agreement.

4 Project Management Plan

- (a) If the Proposal requires the development of a Project Management Plan, the parties must consult with each other and use reasonable efforts to develop and agree the Project Management Plan.
- (b) Unless otherwise specified in the Proposal, the Customer will pay Cirrus for the development of the Project Management Plan in accordance with the Proposal.
- (c) Once the Project Management Plan has been developed and agreed, the parties must use all reasonable efforts to comply with the Project Management Plan.

5 Hardware Products

This clause 5 only applies if Cirrus is required by the Proposal to supply the Customer with Hardware Products.

5.1 Supply of Hardware Products

- (a) Cirrus will supply the Customer with the Hardware Products specified in the Proposal in accordance with this Agreement and any Implementation Plan and Requirements Definition.
- (b) Cirrus will also make the Documentation supplied by the manufacturer of the Hardware Products available to the Customer.
- (c) The manufacturers of the Hardware Products will retain all Intellectual Property Rights in the Documentation supplied with the Hardware Products.
- (d) Cirrus may substitute or modify any component of the Hardware Products or part of any component of the Hardware Products prior to delivery without consultation with the Customer if, in Cirrus's reasonable opinion, the substitution or modification will not materially reduce the functionality or performance of the Hardware Products.

5.2 Delivery of Hardware Products

- (a) Cirrus will use reasonable endeavours to deliver the Hardware Products to the Customer at the Site by the applicable Delivery Date.
- (b) If the Customer requires a Hardware Product to be delivered to a location other than the Site or the Customer requests delivery of a Hardware Product to be made in advance of its Delivery Date or postponed beyond its Delivery Date, the Customer must make its request in writing to Cirrus no later than 10 Business Days (or such other period as is agreed) prior to the Delivery Date. Cirrus may in its sole discretion determine



whether to agree to such a request and what conditions will apply in the event of agreeing to such a request, including any additional charges applicable.

(c) The Customer must ensure it is ready to receive delivery of the Hardware Products at the Site on the Delivery Date. The Customer is responsible for ensuring that the correct quantity and specification of the Hardware Products has been delivered and for ensuring that the Hardware Products are in an acceptable condition in accordance with any Requirements Definition. If the Customer considers that there is a deficiency in the number, specification or condition of the Hardware Products delivered it must notify Cirrus in writing within 48 hours of the delivery and retain such related packaging and documentation as is required to comply with the return conditions of the manufacturer of the Hardware Products. Cirrus will not accept any claim for any deficiency in the number, specification or condition of the Hardware Products delivered which is submitted more than 48 hours after delivery.

(d) Cirrus is not responsible for unpacking the Hardware Products, disposing of packaging material or installing the Hardware Products unless specifically required under the Proposal.

5.3 Defects

(a) Cirrus does not represent or warrant that the Hardware Product will be free from Defects.

(b) Subject to clause 20.2, if the Hardware Product has a Defect, the Customer's entitlement to any warranty will be as set out by the manufacturer of the Hardware Product in the Documentation. The Customer, and not Cirrus, will be responsible for requesting service in relation to the Defect.

5.4 Risk and Title

(a) Risk in the Hardware Products passes to the Customer (including for insurance purposes) when the Hardware Products are collected by the Customer from Cirrus or are delivered to the Customer by Cirrus (as applicable).

(b) Notwithstanding delivery and passing of risk, the property in the Hardware Products supplied by Cirrus under a Proposal shall remain with Cirrus until the Customer has paid all monies owed by it to Cirrus under the Proposal.

(c) If the Proposal provides that any Hardware Products are to be consigned, rented or leased to a Customer, those Hardware Products are and shall remain the property of Cirrus. As such:

(i) the Customer shall not lend or give the Hardware Products to any person;

(ii) the Customer shall not remove the Hardware Products from the specified area agreed under the Proposal without the written consent of Cirrus;

(iii) for the avoidance of doubt, clause 5.4(a) applies to any Hardware Products that are consigned, rented or leased to a Customer; and

(iv) the property in the Hardware Products shall remain with Cirrus for so long as the Hardware Products are consigned, rented or leased to the Customer.

5.5 Personal Property Securities Act 2009 (Cth)

(a) A term used in this clause 5.5 has the same meaning as in the PPSA.

(b) For so long as any of the monies owing by the Customer to Cirrus under this Agreement remain unpaid, or for so long as the Hardware Products are consigned, rented or leased, the Customer acknowledges that by virtue of clause 5.4(b) and/or clause 5.4(c) of this Agreement, Cirrus has a Security Interest in the Hardware Products and their Proceeds under the PPSA, which gives rise to remedies of repossession of the Hardware Products in accordance with the PPSA or otherwise where Cirrus seeks to enforce their Security Interest and this Agreement constitute a Security Agreement that covers the Hardware Products for the purposes of the PPSA.

(c) The Customer agrees to keep the Hardware Products separate from other goods and maintain the labelling and packaging of Cirrus so that the Hardware Products are readily identifiable as the property of Cirrus.

(d) The Customer will, at Cirrus's request, do anything (including obtaining consents, giving notices or directions to any person, making amendments to this Agreement or a Security Agreement or executing a new document) for the purpose of:



- (i) ensuring that any Security Interest granted by the Customer to Cirrus attaches to the collateral that is intended to be covered by that Security Interest, is enforceable, perfected and otherwise effective, and has the priority required by Cirrus;
- (ii) enabling Cirrus to prepare and register a financing statement or financing change statement; or
- (iii) enabling Cirrus to exercise any of its rights or powers in connection with any such Security Interest.
- (e) The Customer will promptly provide any information requested by Cirrus in connection with any Security Interest granted by the Customer to Cirrus to enable Cirrus to exercise any of its rights or powers or perform any of its obligations under the PPSA.
- (f) The Customer waives its right to receive any notices (including notice of a verification statement) required to be given under the PPSA unless that requirement cannot be excluded.
- (g) Except if section 275(7) of the PPSA applies, each of Cirrus and the Customer agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.
- (h) Despite anything contained in this Agreement, Cirrus is not required to disclose any information of the kind referred to in section 275(1) of the PPSA.
- (i) Anything that the Customer is required by Cirrus to do under this clause 5.5 must be done by the Customer at its own expense. The Customer agrees to reimburse on demand Cirrus's costs (including all legal and other professional costs on a full indemnity basis) in connection with any action taken by Cirrus under or in connection with this clause 5.5.

6 Hardware Installation Service

This clause 6 only applies if Cirrus is required by the Proposal to supply the Customer with Hardware Installation Services.

6.1 Supply of Hardware Installation Service

- (a) Cirrus will perform the Hardware Installation Services in accordance with the terms of this Agreement and any Implementation Plan.
- (b) Cirrus will endeavour to perform the Hardware Installation Services for the Customer in accordance with any applicable Milestone Dates set out in any Project Management Plan or Implementation Plan.

6.2 Scope of Cirrus's obligations

- (a) Unless expressly required under the Proposal, the obligations of Cirrus when providing the Hardware Installation Service are confined to installing the Hardware Product which is specified in the Proposal by rendering the Hardware Product ready for the Customer's use by following the installation steps, if any, prescribed by the Documentation supplied with the Hardware Product by its manufacturer. Unless otherwise expressly required by the Proposal, Cirrus is not required to connect the installed Hardware Products to any part of the Customer's computer system, migrate any Customer data or install any Customer provided software (whether provided by Cirrus or not) on to the Hardware Products.
- (b) If the particular Hardware Installation Service specified in the Proposal requires Cirrus to connect any Hardware Product to the Customer's computer system, migrate any Customer data or install any Customer provided software then:
 - (i) the obligation of Cirrus to connect the Hardware Products will be conditional on all parts of the Customer's computer system (including software) being in accordance with the specifications contained in the Proposal or Implementation Plan and otherwise having been properly installed and maintained, being in correct operational order (with appropriate software updates installed), free of defects, free of data corruption and errors and free of Harmful Codes. In no circumstances will Cirrus be responsible for correcting any deficiencies or defects in the Customer's computer system;
 - (ii) the obligations of Cirrus will not extend to developing any software or software interfaces that may be necessary;
 - (iii) the Customer must ensure that its computer system, any relevant data and the Site are available in order to facilitate the provision of the Hardware Installation Service;



- (iv) the Customer must provide Cirrus with the required software installation disks (or other media), the operational, installation and technical documentation relating to the various hardware and software components of the Customer's computer system and administrator logins and passwords necessary to enable Cirrus to provide the Hardware Installation Service;
- (v) the Customer will ensure that its data is backed-up and secure at all times before commencement of the Hardware Installation Service. Cirrus is not responsible for backing up any Customer data;
- (vi) Cirrus will not be responsible for cleansing any transferred data or for correcting any formatting errors, data errors or data corruption which is caused by or arises from the data provided to Cirrus for transfer; and
- (vii) at the completion of the Hardware Installation Service the Customer will be solely responsible for ensuring that all transferred data has been correctly transferred without error, corruption or omission and that all Customer supplied software which has been installed on the Hardware Products is operating correctly.

6.3 Site Preparation

Unless otherwise expressly specified by the Proposal, the Customer is solely responsible for making the Site ready for the installation of the Hardware Products. Without limiting this clause 6.3 the Customer agrees that it is responsible for:

- (a) providing a suitable space at the Site for the installation of the Hardware Products;
- (b) providing appropriate storage racks (where required) for the installation of the Hardware Products;
- (c) providing the required telecommunications links and broadband services for connection to the Hardware Products;
- (d) providing environmental cooling equipment and cooling for the area where each Hardware Product will be installed in accordance with the requirements of the Documentation supplied with the Hardware Product by the manufacturer; and
- (e) electrical power circuits and power as required to operate the relevant Hardware Product in accordance with the requirements of the Documentation supplied with the Hardware Product by the manufacturer.

6.4 Exclusions from the Hardware Installation Service

Unless expressly specified to the contrary in the Proposal, the Hardware Installation Services do not include the following (or services relating to any of the following):

- (a) rectification of defects, errors or computer viruses (except for computer viruses that were introduced by Cirrus) in any software, hardware or equipment, or repairs, support or maintenance relating to those things;
- (b) backup, preservation, translation, migration or management of data;
- (c) rectification of faults in hardware, equipment or telecommunications links or telecommunications services;
- (d) development of any software or software interfaces needed to complete the installation;
- (e) supply and installation of consumables or hardware;
- (f) rectification of errors or failures caused by failure of hardware, power, air-conditioning or other environmental failure; or
- (g) installing, transferring, moving or removing software, data, hardware or other equipment or materials.

6.5 Defect

- (a) Cirrus does not represent or warrant that the Hardware Installation Services will be free from Defects.
- (b) Subject to clause 6.5(d) and clause 19(f), if the Hardware Installation Services has a Defect and the Customer notifies Cirrus of this Defect during the Warranty Period, then the Customer's sole and exclusive remedy for that Defect is that Cirrus will use its reasonable efforts, without any guaranteed service levels, and at no cost to the Customer rectify the Defect or correct or re-perform the Hardware Installation Services.
- (c) Subject to clause 6.5(d) and clause 19(f), if the Hardware Product has a Defect, then Cirrus's sole responsibility will be to request that the manufacturer of the Hardware Product rectify the Defect or repair or replace the Hardware Product. This clause 6.5(c) only applies if Cirrus is required under the Proposal to supply the Customer with Hardware Installation Services for the relevant Hardware Product.



(d) Cirrus will have no responsibility to assist the Customer in respect of a Defect under this clause 6.5 where:

- the Customer has not used the Hardware Product in accordance with its Documentation and its intended purpose;
- the Hardware Product has been used on or in conjunction with equipment or software not approved by Cirrus;
- the Hardware Product has been modified by someone other than Cirrus;
- the Defect is caused by items not supplied by Cirrus or any error or defect in the Customer's computer system or physical environment;
- the Defect is due to a Force Majeure Event; or
- the Customer is in breach of this Agreement.

7 Supply of Software Development Service

This clause 7 only applies if Cirrus is required by the Proposal to supply the Customer with a Software Development Service.

7.1 Supply of Software Development Service

- (a) Cirrus will perform the Software Development Service in accordance with the terms of this Agreement and any Implementation Plan or Requirements Definition.
- (b) Cirrus will endeavour to provide the Software Development Service to the Customer in accordance with any applicable Milestone Dates set out in any Project Management Plan or Implementation Plan.
- (c) Cirrus is not responsible for installing the Developed Software unless the Customer has agreed to purchase the Software Installation Service for that Developed Software.

7.2 Documentation

- (a) Cirrus will make the Documentation or information required to enable the Customer to use the Developed Software available to the Customer.
- (b) Cirrus will ensure that the Documentation in relation to the Developed Software contains sufficient information to enable the Customer to make use of the Developed Software, is current, accurate and consistent with any Requirements Definition.
- (c) If Cirrus updates, revises or adds to the Documentation in relation to the Developed Software, Cirrus must provide the revised Documentation to the Customer without charge.

7.3 Interoperability

- (a) Unless otherwise expressly required under the Proposal, the Developed Software is not required to integrate or interoperate with any other software or parts of the Customer's computer system.
- (b) If the Developed Software is required to integrate or interoperate with any other software or parts of the Customer's computer system then:
 - (i) the obligations of Cirrus will be conditional on all parts of the computer system (including software) being in accordance with the specifications (if any) contained in the Proposal and otherwise having been properly installed and maintained, being in correct operational order (with all software updates installed), free of defects, free of data corruption and errors and free of Harmful Codes. In no circumstances will Cirrus be responsible for correcting any deficiencies or defects in the Customer's computer system;
 - (ii) the Customer must ensure that its computer system and the Site are ready and available to Cirrus in order to facilitate the provision of the services by Cirrus; and
 - (iii) the Customer must provide Cirrus with the operational and technical documentation relating to the various hardware and software components of the Customer's computer system and administrator logins and passwords necessary to enable Cirrus to undertake its responsibilities.

7.4 Acceptance testing of Developed Software

- (a) This clause 7.4 only applies if:
 - (i) the parties have agreed in the Proposal that specific Developed Software will be subject to acceptance testing;



- (ii) Cirrus is required under the Proposal to supply the Customer with Software Installation Service for the relevant Developed Software; and
- (iii) the parties have agreed an Acceptance Test Plan for the relevant Developed Software.
- (b) Subject to clause 7.4(a), following the completion of the relevant Software Installation Service in accordance with clause 10, the Customer may conduct acceptance testing of the Developed Software in accordance with the applicable Acceptance Test Plan.
- (c) Cirrus will provide all assistance which is required under the applicable Acceptance Test Plan or which is otherwise reasonably requested by the Customer in relation to the acceptance testing.
- (d) Each party will bear its own costs of conducting the acceptance testing.
- (e) If on completing of the acceptance testing:
 - (i) the relevant Developed Software materially passes the requirements of the Acceptance Test Plan, the Customer will give Cirrus a notice confirming that the relevant Developed Software has passed the acceptance testing (**Acceptance Notice**); or
 - (ii) the relevant Developed Software fails in a material way to meet the requirements of the Acceptance Test Plan, the Customer will give Cirrus a notice confirming that the relevant Developed Software has not passed the acceptance testing and details of why the relevant Developed Software does not satisfy the requirements of the Acceptance Test Plan (**Rejection Notice**). Cirrus must then modify the relevant Developed Software and allow the Customer to conduct further acceptance testing until the relevant Developed Software passes the requirements of the Acceptance Test Plan.

7.5 Acceptance

- (a) If acceptance testing is not applicable under clause 7.4, then unless the Customer gives Cirrus written notice of any aspect of the Developed Software which is alleged by the Customer to be not in accordance with this Agreement or any applicable Requirements Definition, within 10 Business Days of Cirrus making the Developed Software available to the Customer, the Customer is deemed to have accepted the Developed Software.
- (b) Where the Customer puts the Developed Software to commercial use, it is deemed to have accepted the Developed Software and the Services performed in relation to the Developed Software on the first day of such use.

7.6 Defect

- (a) Cirrus does not represent or warrant that the Developed Software or the Software Development Services will be free from Defects.
- (b) Subject to clause 7.6(c) and clause 19(f), if a Developed Software or the Software Development Services has a Defect and the Customer notifies Cirrus of this Defect during the Warranty Period, then the Customer's sole and exclusive remedy for that Defect is that Cirrus will use its reasonable efforts, without any guaranteed service levels, and at no cost to the Customer:
 - in respect of a Developed Software, rectify the Defect or repair or replace the Developed Software; and
 - in respect of the Software Development Service, rectify the Defect or correct or re-perform the Software Development Services.
- (c) Cirrus will have no responsibility to assist the Customer in respect of a Defect where:
 - the Customer has not used the Developed Software in accordance with its Documentation and its intended purpose;
 - the Developed Software has been used on or in conjunction with equipment or software not approved by Cirrus;
 - the Developed Software has been modified by someone other than Cirrus;
 - the Defect is caused by items not supplied by Cirrus or any error or defect in the Customer's computer system or physical environment;
 - the Defect is due to a Force Majeure Event; or
 - the Customer is in breach of this Agreement.



8 Supply of Developed Software Support Services

This clause 8 only applies if Cirrus is required by the Proposal to supply the Customer with a Developed Software Support Service.

8.1 Supply of Developed Software Support Service

- (a) Cirrus will provide the Customer with the Developed Software Support Service in relation to the Developed Software in accordance with the terms of this Agreement, for the period set out in the Proposal.
- (b) Cirrus will, during the support hours specified in the Proposal, provide telephone and email support to the Customer to enable the Customer to:
 - report any defect or error in the Developed Software to Cirrus; and
 - seek answers to technical and user questions relating to the Developed Software.
- (c) Cirrus will use reasonable efforts to provide software patches for any defects or errors which Cirrus identifies as a result of the Customer reporting any defect or error.
- (d) Cirrus will ensure that during the support hours, it is staffed with a reasonable number of Cirrus's Personnel who are adequately trained to respond to technical and user questions relating to the Developed Software.
- (e) Cirrus will answer technical and user questions from the Customer's Personnel during support hours relating to the Developed Software as soon as practicable, and in any event within the timeframes specified in the Proposal.
- (f) Cirrus will have a voicemail and email facilities to enable the Customer to leave messages for Cirrus's Personnel outside the support hours.

9 Supply of Licensed Software Licence and Licensed Software Support Plans

This clause 9 only applies if Cirrus is required by the Proposal to supply the Customer with a Licensed Software Licence or a Licensed Software Support Plan.

9.1 Supply of Licensed Software Licence

- (a) Cirrus will make the Licensed Software specified in the Proposal available to the Customer in accordance with this Agreement and any Implementation Plan and Requirements Definition.
- (b) Cirrus will also make the Documentation (where provided by the licensor of that Licensed Software) available to the Customer.
- (c) Cirrus will use reasonable endeavours to make the Licensed Software available to the Customer by the applicable Delivery Date.
- (d) The Customer acknowledges that Cirrus is a reseller of the Licensed Software Licence, not a licensor. The Licensed Software is licensed to the Customer directly by the relevant licensor of that Licensed Software according to the terms of the Licensed Software Licence.
- (e) Cirrus does not represent or warrant that the Licensed Software will be free from Defects. Subject to clause 20.2, if the Licensed Software has a Defect, the Customer's entitlement to any warranty will be as set out by the licensor of the Licensed Software in the Licensed Software Licence. The Customer, and not Cirrus, will be responsible for requesting service in relation to the Defect.
- (f) Cirrus is not liable to the Customer for the performance of the Licensed Software. The Customer's rights and obligations in respect of the Licensed Software are as set out in the Licensed Software Licence.
- (g) Cirrus is not responsible for installing the Licensed Software unless the Customer has agreed to purchase the Software Installation Service for that Licensed Software.

9.2 Supply of Licensed Software Support Plans

Cirrus will provide the Customer with the Licensed Software Support Plan. The Customer acknowledges that Cirrus is a reseller of the Licensed Software Support Plan, The support for the Licensed Software is provided by the relevant supplier specified in the Licensed Software Support Plan according to the terms of that plan. Cirrus is not liable to the Customer for the support services described in the Licensed Software Support Plan.



The Customer's rights and obligations to the support services in respect of the Licensed Software are as set out in the Licensed Software Support Plan.

10 Supply of Software Installation Service

This clause 10 only applies if Cirrus is required by the Proposal to supply the Customer with a Software Installation Service.

10.1 Supply of Software Installation Service

(a) Cirrus will perform the Software Installation Service in accordance with the terms of this Agreement and any Implementation Plan.

(b) Cirrus will endeavour to provide the Software Installation Services to the Customer in accordance with any applicable Milestone Dates set out in any Project Management Plan or Implementation Plan.

10.2 Data back up

The Customer will ensure that its data is backed-up and secure at all times before commencement of the Software Installation Service. Cirrus is not responsible for backing up any Customer data.

10.3 Scope of Cirrus's obligations

(a) Unless expressly required under the Proposal, the obligations of Cirrus when providing the Software Installation Service are confined to installing the relevant Software specified in the Proposal by rendering the Software ready for the Customer's use by following the installation steps, if any, prescribed by the Documentation supplied with the Software. Unless otherwise expressly required under the Proposal Cirrus is not required to integrate the installed Software with any other software or parts of the Customer's computer system, migrate any Customer data or install any Customer provided software.

(b) If the particular Software Installation Service specified in the Proposal requires Cirrus to integrate the installed Software with any other software or parts of the Customer's computer system, migrate any Customer data or install any Customer provided software then:

- the obligations of Cirrus will be conditional on all parts of the computer system (including software) being in accordance with the specifications (if any) contained in the Proposal and otherwise having been properly installed and maintained, being in correct operational order (with all software updates installed), free of defects, free of data corruption and errors and free of Harmful Codes. In no circumstances will Cirrus be responsible for correcting any deficiencies or defects in the Customer's computer system;
- the obligations of Cirrus will not extend to developing any software or software interfaces that may be necessary to complete the Software Installation Service;
- the Customer must ensure that its computer system, any relevant data and the Site are ready and available to Cirrus in order to facilitate the provision of the Software Installation Service by Cirrus;
- the Customer must provide Cirrus with the required software installation disks (or other media), the operational, installation and technical documentation relating to the various hardware and software components of the Customer's computer system and administrator logins and passwords necessary to enable Cirrus to undertake its responsibilities;
- Cirrus will not be responsible for cleansing any transferred data or for correcting any formatting errors, data errors or data corruption which is caused by or arises from the data provided to Cirrus for transfer; and
- at the completion of the Software Installation Service the Customer will be solely responsible for ensuring that all transferred data has been correctly transferred without error, corruption or omission.

10.4 Exclusions from the Software Installation Service

Unless expressly specified to the contrary in the Proposal, the Software Installation Service does not include the following (or services relating to any of the following):



- (a) rectification of defects, errors or computer viruses (except for computer viruses that were introduced by Cirrus) in any software, hardware or equipment, or repairs, support or maintenance relating to those things;
- (b) backup, preservation, translation, migration or management of data;
- (c) rectification of faults in hardware, equipment or telecommunications links or telecommunications services;
- (d) development of any software or software interfaces needed to complete the installation;
- (e) supply and installation of consumables or hardware;
- (f) rectification of errors or failures caused by failure of hardware, power, air-conditioning or other environmental failure;
- (g) installing, transferring, moving or removing software (other than the specified Software), data, hardware or other equipment or materials.

10.5 Defect

- (a) Cirrus does not represent or warrant that the Software Installation Services will be free from Defects.
- (b) Subject to clause 10.5(d) and clause 19(f), if the Software Installation Services has a Defect and the Customer notifies Cirrus of this Defect during the Warranty Period, then the Customer's sole and exclusive remedy for that Defect is that Cirrus will use its reasonable efforts, without any guaranteed service levels, and at no cost to the Customer rectify the Defect or correct or re-perform the Software Installation Services.
- (c) Subject to clause 10.5(d) and clause 19(f), if the Licensed Software has a Defect, then Cirrus's sole responsibility for that Defect is to request that the licensor of the Licensed Software rectify the Defect or repair or replace the Licensed Software. This clause 10.5(c) only applies if Cirrus is required under the Proposal to supply the Customer with Software Installation Services for the Licensed Software.
- (d) Cirrus will have no responsibility to assist the Customer in respect of a Defect under this clause 10.5 where:
 - the Customer has not used the Software in accordance with its Documentation and its intended purpose;
 - the Software has been used on or in conjunction with equipment or software not approved by Cirrus;
 - the Software has been modified by someone other than Cirrus;
 - the Defect is caused by items not supplied by Cirrus or any error or defect in the Customer's computer system or physical environment;
 - the Defect is due to a Force Majeure Event; or
 - the Customer is in breach of this Agreement.

11 Consultancy Services

This clause 11 only applies if Cirrus is required by the Proposal to supply the Customer with any Consultancy Services.

11.1 Supply of Consultancy Services

- (a) Cirrus will provide the Customer with the Consultancy Services in accordance with the terms of this Agreement.
- (b) Cirrus will endeavour to provide the Consultancy Services to the Customer in accordance with any applicable Milestone Dates set out in any Project Management Plan or in the absence of a Project Management Plan, within the time frame specified in the Proposal.

11.2 Defect

- (a) Cirrus does not represent or warrant that the Consultancy Services will be free from Defects.
- (b) Subject to clause 11.2(c) and clause 19(f), if the Consultancy Services has a Defect and the Customer notifies Cirrus of this Defect during the Warranty Period, then the Customer's sole and exclusive remedy for that Defect is that Cirrus will use its reasonable efforts, without any guaranteed service levels, and at no cost to the Customer rectify the Defect or correct or re-perform the Consultancy Services.



- (c) Cirrus will have no responsibility to assist the Customer in respect of a Defect where:
- the Defect is caused by items not supplied by Cirrus or any error or defect in the Customer's computer system or physical environment;
 - the Defect is due to a Force Majeure Event; or
 - the Customer is in breach of this Agreement.

12 Hosting Services

This clause 12 only applies if Cirrus is required by the Proposal to supply the Customer with a Hosting Service.

12.1 Supply of Hosting Service

- (a) Cirrus will arrange for the Hosting Service specified in the Proposal to be made available to the Customer in accordance with this Agreement and any Implementation Plan and Requirements Definition.
- (b) Cirrus will also make the Documentation (where provided by the supplier of that Hosting Service) available to the Customer.
- (c) Cirrus will use reasonable endeavours to make the Hosting Service available to the Customer by the applicable Delivery Date.

12.2 Supplier terms for the Hosting Service

- (a) The Customer acknowledges that Cirrus is a reseller of the Hosting Service, not a supplier. The Hosting Service is supplied to the Customer directly by the relevant supplier of that Hosting Service according to the relevant supplier's terms for the Hosting Service (**Supplier's Hosting Terms**).
- (b) If the Hosting Service is Microsoft Azure, a copy of the Microsoft Customer Agreement is available.
- (c) If the Hosting Service is supplied by Ingram Micro, a copy of the relevant terms and conditions for the Hosting Service is available on <https://au.cloud.im/legal/>.
- (d) If the Hosting Service is supplied by Proficio, a copy of the relevant terms and conditions for the Hosting Service is available on <https://www.proficio.com/service-agreement/>.
- (e) For all other Hosting Services, Cirrus will provide a copy of or a link to the relevant Supplier's Hosting Terms in the Proposal.
- (f) By accepting the Proposal, the Customer accepts the relevant Supplier's Hosting Terms. For the avoidance of doubt, the relevant Supplier's Hosting Terms regulates the relationship between the Customer and the supplier of that Hosting Service. The Customer agrees that acceptance of the Supplier's Hosting Terms is a condition of the use of the Hosting Service.
- (g) Cirrus is not liable to the Customer for the performance of the Hosting Service. The Customer's rights and obligations in respect of the Hosting Service are as set out in the Supplier's Hosting Terms.
- (h) The Customer acknowledges and agrees that the supplier of the Hosting Service can refuse, in its discretion, to agree to make the Hosting Service available to the Customer. Cirrus has no control over, or liability in relation to, any such refusal.
- (i) The Customer must comply with the relevant Supplier's Hosting Terms, as modified by the relevant supplier from time to time, and will indemnify and hold harmless Cirrus and its Personnel from and against any Loss incurred or suffered by Cirrus and its Personnel arising from or in connection with a breach by the Customer of the Supplier's Hosting Terms.
- (j) Cirrus does not represent or warrant that the Hosting Service will be free from Defects. Subject to clause 20.2, if the Hosting Service has a Defect, the Customer's entitlement to any warranty will be as set out by the supplier of the Hosting Service in the Supplier's Hosting Terms. The Customer, and not Cirrus, will be responsible for requesting service in relation to the Defect.

12.3 Payment of the Hosting Service

The Customer must pay Cirrus, not the supplier of the Hosting Services, the Fees to use the Hosting Services in accordance with this Agreement. The Customer acknowledges that Cirrus will pay the amount agreed between Cirrus and supplier of the Hosting Services for the Customer to use the Hosting Services.



13 Telecommunications Carriage Services

This clause only applies if Cirrus is required by the Proposal to supply the Customer with a Telecommunications Carriage Service.

13.1 Supply of Telecommunications Carriage Service

- (a) Cirrus will arrange for the Telecommunications Carriage Service specified in the Proposal to be made available to the Customer in accordance with this Agreement and any Implementation Plan and Requirements Definition.
- (b) Cirrus will also make the Documentation (where provided by the supplier of that Telecommunications Carriage Service) available to the Customer.
- (c) Cirrus will use reasonable endeavours to make the Telecommunications Carriage Service available to the Customer by the applicable Delivery Date.

13.2 Supplier terms for the Telecommunications Carriage Service

- (a) The Customer acknowledges that Cirrus is a reseller of the Telecommunications Carriage Service, not a supplier. The Telecommunications Carriage Service is supplied to the Customer directly by the relevant supplier of that Telecommunications Carriage Service according to the relevant supplier's terms for the Telecommunications Carriage Service (**Supplier's Telco Terms**).
- (b) If the Telecommunications Carriage Service is supplied by Vocus, a copy of the relevant terms and conditions for the Telecommunications Carriage Service is available on <https://www.vocus.com.au/legal/contracts>
- (c) For all other Telecommunications Carriage Services, Cirrus will provide a copy of or a link to the relevant Supplier's Telco Terms in the Proposal.
- (d) By accepting the Proposal, the Customer accepts the relevant Supplier's Telco Terms. For the avoidance of doubt, the relevant Supplier's Telco Terms regulates the relationship between the Customer and the supplier of that Telecommunications Carriage Service. The Customer agrees that acceptance of the Supplier's Telco Terms is a condition of the use of the Telecommunications Carriage Service.
- (e) Cirrus is not liable to the Customer for the performance of the Telecommunications Carriage Service. The Customer's rights and obligations in respect of the Telecommunications Carriage Service are as set out in the relevant Supplier's Telco Terms.
- (f) The Customer acknowledges and agrees that the supplier of the Telecommunications Carriage Service can refuse, in its discretion, to agree to make the Telecommunications Carriage Service available to the Customer. Cirrus has no control over, or liability in relation to, any such refusal.
- (g) The Customer must comply with the relevant Supplier's Telco Terms, as modified by the relevant supplier from time to time, and will indemnify and hold harmless Cirrus and its Personnel from and against any Loss incurred or suffered by Cirrus and its Personnel arising from or in connection with a breach by the Customer of the Supplier's Telco Terms.
- (h) Cirrus does not represent or warrant that the Telecommunications Carriage Service will be free from Defects. Subject to clause 20.2, if the Telecommunications Carriage Service has a Defect, the Customer's entitlement to any warranty will be as set out by the supplier of the Telecommunications Carriage Service in the relevant Supplier's Telco Terms. The Customer, and not Cirrus, will be responsible for requesting service in relation to the Defect.

13.3 Payment of the Telecommunications Carriage Service

The Customer must pay Cirrus, not the supplier of the Telecommunications Carriage Services, the Fees to use the Telecommunications Carriage Services in accordance with this Agreement. The Customer acknowledges that Cirrus will pay the amount agreed between Cirrus and supplier of the Telecommunications Carriage Services for the Customer to use the Telecommunications Carriage Services.

14 General obligations



14.1 Cirrus obligations

The Services will be provided with due care and skill and in accordance with all applicable laws and regulations.

14.2 Customer obligations

The Customer must:

- (a) provide Cirrus with access to the information, equipment, facilities and the Site that Cirrus reasonably requires to perform the Services, including reasonable and necessary on-line access, electrical power, telephone services and working space as Cirrus may reasonably request;
- (b) provide sufficient, qualified Personnel capable of performing all of its duties and obligations under the Proposal and this Agreement and will provide reasonable access to its relevant Personnel.

15 Fees, payments and invoices

15.1 Fees

The Customer must pay Cirrus the Fees in accordance with this Agreement and the Proposal.

15.2 Out of Scope services

Where Cirrus provides the Customer with services that are outside the scope of the Services required by the Proposal, then unless agreed otherwise, the Customer must pay Cirrus's standard hourly rates for providing that service.

15.3 Expenses

- (a) In addition to the Fees, the Customer must pay Cirrus or reimburse Cirrus for any expenses which the Customer is required to pay or incur under the Proposal or otherwise under this Agreement in order for Cirrus to perform this Agreement.
- (b) Unless specified otherwise, Cirrus will charge an administration fee of 5% on the expenses.

15.4 Invoice and payment

- (a) Subject to the Proposal, Cirrus will invoice the Customer for the Fees on a periodic basis and will provide the Customer with a valid tax invoice.
- (b) The Customer must pay the amount invoiced within 30 Days of the date of invoice.
- (c) Payment is via direct deposit into the nominated bank account. Where approval is granted by Cirrus for payment by Visa, Bankcard or Mastercard, these will incur a 2.5% surcharge.

15.5 Disputed invoices

If the Customer wishes to dispute an invoice it must:

- (a) pay all parts of the invoice which are not the subject of a bona fide dispute; and
- (b) give Cirrus notice of the dispute and the reasons why the Customer disputes the invoice, before the due date for payment of the invoice.

15.6 Default in payment

If the Customer fails to pay any amount payable under this Agreement by the due date then, except where the amount has been validly disputed pursuant to clause 15.5, Cirrus may (without prejudice to any other remedies to which it is entitled):

- (a) charge the Customer interest (calculated on a daily basis) on any unpaid amounts at a rate of 10% per annum for the duration that the amount is unpaid; and
- (b) suspend performance of Cirrus's obligations under this Agreement without any liability to the Customer.

15.7 Fees variations

- (a) The Fees are subject to variation as set out in this clause 15.7.
- (b) If any Hardware Products, Software or Services are provided over a period greater than 12 months, the Fees in the Proposal will be subject to annual adjustment on the first anniversary of the Commencement Date, and on each anniversary of the Commencement Date after that.
- (c) Any increase in the Fees will be calculated in accordance with the greater of:
 - (i) the change in the CPI between the relevant anniversary date and the date on which the Fees were last set or varied; or
 - (ii) 5%.



(d) At any time during the Term, if there is an increase in the price imposed by third party suppliers in relation to any Hardware, Software or Service supplied under this Agreement, then the Fees payable under this Agreement will be adjusted to reflect the increase as they are charged to Cirrus by the third party supplier.

16 Taxes

16.1 General

- (a) Unless expressly stated otherwise, all amounts payable are exclusive of any Taxes.
- (b) Subject to clause 16.2, the Customer must pay all Taxes in connection with this Agreement.
- (c) If the law requires the Customer to make a deduction or withholding for or on account of Taxes from a payment, the Customer must pay Cirrus an additional amount so that Cirrus receives an amount equal to the payment which would have been paid had no deduction or withholding been made.

16.2 GST

- (a) A term used in this clause 16.2 has the same meaning as in the GST Act.
- (b) Where GST is imposed on a Taxable Supply made in connection with this Agreement and the Recipient of that Supply receives a Tax Invoice for that Supply, the Recipient must pay the GST to the Supplier (without deduction or set-off) by the due date.
- (c) If one party is required to indemnify or reimburse another party (the **First Party**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the First Party (or an entity grouped with the First Party for GST purposes) is entitled to an Input Tax Credit, but will be increased in accordance with clause 16.2(b) if the amount payable is Consideration for a Taxable Supply.

17 Confidentiality

17.1 Protection of Confidential Information

Each party must only use or copy the other party's Confidential Information for the purposes of this Agreement and must take all steps reasonably necessary to:

- (a) maintain the confidentiality of the other party's Confidential Information; and
- (b) ensure that any person who has access to Confidential Information of the other party through it or on its behalf does not use, copy or disclose that Confidential Information other than in accordance with this Agreement.

17.2 Disclosure of Confidential Information

- (a) Each party must not disclose the Confidential Information of the other party to any person except:
 - (i) to its Personnel who need to know the Confidential Information for the purposes of this Agreement;
 - (ii) as required to be disclosed by law; or
 - (iii) with the consent of the other party.
- (b) Before disclosing Confidential Information to a person, the disclosing party must take reasonable steps to ensure that the person is aware of the confidential nature of the Confidential Information and has agreed to comply with the confidentiality obligations under this Agreement.

17.3 Return of Confidential Information

Each party must, at the other party's request return, erase, destroy or procure the return, erasure or destruction (as applicable) of all copies of the other party's Confidential Information in its possession or control.

17.4 Injunctive relief

A party will be entitled to seek injunctive relief for any breach or threatened breach of the other party's obligations of confidentiality.

18 Privacy

- (a) Each party must comply with all applicable Privacy Laws in relation to any Personal Information that is collected, stored, used, disclosed or otherwise dealt with under or in connection with this Agreement.



(b) To the extent the Customer discloses any Personal Information to Cirrus, the Customer warrants that it has given all necessary notifications and has obtained all necessary consents required to disclose that information to Cirrus and to enable its lawful use by Cirrus.

19 Intellectual Property Rights

(a) Each party acknowledges and agrees that the other party (or its licensors) retains ownership of that party's Existing IP.

(b) The Customer grants to Cirrus a non-exclusive, irrevocable, royalty-free licence to use the Customer's Existing IP during the Term for the purpose of performing its obligations under this Agreement.

(c) Unless specified otherwise in the Proposal, subject to the Customer's compliance with this Agreement and payment of all applicable Fees, the Customer will exclusively own all Developed IP in each Deliverable from the date of its creation.

(d) To the extent that any Deliverable incorporates any of Cirrus's Existing IP, Cirrus grants to the Customer a non-exclusive, royalty-free licence to use Cirrus's Existing IP to enable the Customer to use the Deliverable.

(e) The Customer grants to Cirrus a non-exclusive, irrevocable, royalty-free licence to use the Developed IP in each Deliverable during the Term for the purpose of performing its obligations under this Agreement.

(f) Despite any other clause in this Agreement, where a Deliverable contains Intellectual Property Rights owned by a third party (e.g. Licensed Software or Documentation for Licensed Software or a Hardware Product), this Agreement does not transfer ownership of such Intellectual Property Rights to the Customer and the applicable third party will retain all Intellectual Property Rights in such Deliverable.

20 Implied Terms

20.1 Exclusion of implied terms

Any representation, warranty, condition, guarantee or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

20.2 Non-Excludable Guarantee

(a) Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement (**Non-Excludable Guarantee**).

(b) To the maximum extent permitted by law, Cirrus's liability for breach of a Non-Excludable Guarantee is limited, at Cirrus's option, to:

(i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or

(ii) in the case of services, the supplying of the services again or the payment of the cost of having the services supplied again.

21 Liability

21.1 No reliance on representations

(a) The Customer warrants that it has not relied on any representation or warranties made by Cirrus which has not been stated expressly in this Agreement, or relied upon any descriptions, illustrations or specifications contained in any document including websites or publicity material produced or provided by Cirrus.

(b) The Customer acknowledges that to the extent Cirrus has made any representation or warranty which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation or warranty.

21.2 Limitation of Liability

Subject to clause 20.2, Cirrus will be under no liability to the Customer or any other person in respect of:



- any Loss that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its Personnel;
- any indirect, incidental, special or consequential Loss, loss of profits or anticipated profits, loss of revenue, loss of savings, loss of opportunity, or loss or corruption of data suffered incurred by the Customer under or in connection with this Agreement (whether arising under contract, in tort (including negligence) or otherwise), irrespective of whether the Customer or its Personnel previously notified Cirrus of the possibility of such loss.

21.3 Liability cap

(a) Subject to clause 20.2, to the maximum extent permitted by law, the maximum aggregate liability of Cirrus for all proven Losses and Claims arising under or in connection with this Agreement, whether in contract, statute, tort (including negligence), equity or otherwise, is limited to the Fees paid by the Customer to Cirrus under this Agreement in relation to the particular Service, Software or Hardware Product which was responsible for or connected with the relevant Loss or Claim.

(b) The cap on Cirrus's liability in clause 21.3(a) does not apply to any injury or death to a person, any breach of clause 17 or any infringement of a third party's Intellectual Property Rights including under the indemnity set out in clause 21.4(b).

21.4 Indemnity

(a) The Customer will at all times indemnify and hold harmless Cirrus and its Personnel (**Cirrus Indemnified Parties**) from and against any Loss reasonably incurred or suffered by any of the Cirrus Indemnified Parties arising from any Claim against the Cirrus Indemnified Parties where such Loss was caused by:

- (i) a breach by the Customer of its obligations under this Agreement;
- (ii) the Customer's access to and use of a Hardware Product, Software or Services; or
- (iii) any wilful, unlawful or negligent act or omission of the Customer.

(b) Cirrus will indemnify and hold harmless the Customer from and against any Loss reasonably incurred or suffered by the Customer arising from any Claim against the Customer by a third party alleging that the use of the Developed Software or the Software Development Services provided under this Agreement infringed the Intellectual Property Rights of any person. The indemnity is subject to the Customer promptly notifying Cirrus of the relevant Claim and allowing Cirrus to control the defence of the Claim.

22 Termination

22.1 Termination by Cirrus

Without limiting the generality of any other provision in this Agreement, Cirrus may suspend and/or terminate its provision of all or any of the Services, Software or the Hardware Products under any Proposal and this Agreement immediately by written notice if the Customer:

- (a) is the subject of an Insolvency Event, except to the extent that a stay on the exercise of such a right applies under sections 415D – 415G, 434J – 434M or 451E – 451H of the Corporations Act;
- (b) fails to pay an amount owing under this Agreement as provided in clause 15.6(b); or
- (c) commits a breach of this Agreement not related to payment of money and that breach is incapable of remedy or is capable of remedy but the Customer fails to remedy the breach within 15 Business Days of receiving notice requiring it to do so.

22.2 Termination by Customer

The Customer may terminate this Agreement immediately by written notice, if Cirrus:

- (a) is the subject of an Insolvency Event, except to the extent that a stay on the exercise of such a right applies under sections 415D – 415G, 434J – 434M or 451E – 451H of the Corporations Act; or
- (b) commits a breach of this Agreement and Cirrus fails to remedy the breach within 15 Business Days of receiving notice requiring it to do so.

22.3 Consequences of termination

- (a) If this Agreement expires or is terminated for any reason:
 - (i) each party may repossess any of its property in the possession, custody or control of the other party;



- (ii) Customer must pay Cirrus all amounts payable as at expiry or termination (including early termination charges specified in the Proposal) and any amount which would have become payable but for that termination or expiry;
 - (iii) Cirrus may charge for all costs, disbursements and expenses, incurred in expectation of performing all of the requirements of the Proposal including the cost of any Licensed Software Licences, Licensed Software Support Plans and Hardware Products purchased for on supply to the Customer prior to the termination date (except to the extent the Customer has already paid the applicable Fees for those items); and
 - (iv) all rights that a party has accrued before termination continue.
- (b) Clauses 1, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28 and 30 survive the expiry or termination of this Agreement, as well as all other clauses which by their nature should survive the expiry or termination of this Agreement.

23 Cirrus Personnel

The Customer must not, during the Term and for 2 years after the expiry or termination of this Agreement, directly or indirectly solicit for employment or engagement the services of any of Cirrus's Personnel involved in the supply of the Services to the Customer. The Customer acknowledges that the restraint in this clause 23 is reasonable in its extent and goes no further than is reasonably necessary to protect Cirrus's interest in maintaining its Personnel.

24 Dispute resolution

- (a) The parties agree to use best endeavours to resolve in good faith any dispute concerning this Agreement.
- (b) Each party must follow the procedures in this clause 24 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- (c) If a dispute arises between the parties and that dispute cannot be resolved promptly between their nominated contact persons, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet with 10 Business Days of the notice (or another agreed period) to try and resolve the dispute.
- (d) If the dispute remains unresolved after the expiry of 10 Business Days from the date a party gave notice of the dispute, the parties must try to resolve the dispute by mediation administered by the Australian Disputes Centre in accordance with its then-current Guidelines for Commercial Mediation.
- (e) Despite the existence of a dispute, and except where otherwise provided, each party will continue to perform its obligations under this Agreement.

25 Insurance

Cirrus will, during performance of the Services, hold insurance policies for the following risks and to the following minimum amounts:

- (a) Public Liability: \$20 million per event and in the aggregate;
- (b) Professional Indemnity: \$5 million per event and in the aggregate; and
- (c) Workers Compensation: to the extent required by law.

26 Force majeure

- (a) Neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an obligation to pay money), because of a Force Majeure Event.
- (b) If a Force Majeure Event occurs, the non-performing party must:
 - (i) promptly notify the other party of the event and provide an estimate of the non-performance and delay;
 - (ii) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and



- (iii) resume compliance as soon as practicable after the event no longer affects either party.
- (c) If the Force Majeure Event continues for a period of 2 months, either party may terminate this Agreement immediately by giving the other party written notice.

27 Delivery and delays

- (a) Cirrus will use its reasonable endeavours to meet the Delivery Date, Milestone Date or any other date agreed under this Agreement or the Project Management Plan but does not guarantee it will do so.
- (b) Without limiting clause 26, Cirrus will not be responsible for any delays (or costs and losses arising from delays) which occur during the course of the Term and which arise from any non-compliance by the Customer with this Agreement, an applicable Proposal or Project Management Plan, the late supply or provision of instructions and information by the Customer, delays in obtaining access to the Site or any other delays caused by the Customer's third party suppliers and contractors.
- (c) Cirrus will be entitled to extension of time in respect of any Delivery Date, Milestone Date or any other date agreed under this Agreement equal to the duration of any delay caused by Force Majeure Event or a cause specified in clause 27(b).
- (d) If the Proposal specifies any service credits payable for the non-achievement of any service levels, those service credits are the Customer's sole and exclusive remedy for the non-achievement of the applicable service levels.

28 Notices

- (a) All notices and consents must be in writing signed by the sender's contact person, marked to the attention of the recipient's contact person and sent to the addresses specified in the Proposal or as otherwise notified.
- (b) Notices sent:
 - (i) by hand, are taken to be received when delivered;
 - (ii) by post to an address in Australia, are taken to be received by the third Business Day after posting;
 - (iii) by post to an address outside Australia, are taken to be received by the seventh Business Day after posting; or
 - (iv) by email before 5pm on a Business Day, are taken to be received on the day of transmission (otherwise, if sent after 5pm, on the next Business Day), provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.

29 Variation and change control

- (a) This Agreement may only be varied by written agreement between the parties.
- (b) If either party (the **Proposing Party**) wishes to vary the Agreement:
 - the Proposing Party will submit a copy of the proposed variations to the other Party (the **Receiving Party**), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal;
 - if the Receiving Party accepts the variations, the Agreement will be deemed to be so amended from the date of acceptance; and
 - if the Receiving Party rejects the proposed variations, each party will perform the Agreement in accordance with the unvaried terms.

30 Miscellaneous

30.1 The Customer acknowledges that Cirrus may subcontract the performance of all or part of its obligations under this Agreement.

30.2 Nothing in this Agreement (whether express or implied) is intended to create or constitute a relationship of partnership, agency, employment, trustee or other fiduciary relationship between the parties. It is the intention of the parties that any such relationship is expressly denied.



30.3 Neither party may assign any of its rights or novate any obligations under this Agreement without the prior written consent of the other party (consent not to be unreasonably withheld or delayed). Either party may assign or novate this Agreement to any purchaser of all or substantially all of its business assets without the need to obtain consent from the other party.

30.4 A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy. A waiver of a breach of this Agreement does not waive any other breach.

30.5 This Agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

30.6 This Agreement is governed by the laws applicable in WA, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

30.7 If any clause or part of any clause is held by a court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.

30.8 A party, at its own cost and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to this Agreement.

30.9 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.