

ZIRILIO
MASTER SERVICES STANDARD TERMS

Recitals

- A This Agreement sets out the standard terms used by ZIRILIO to provide various products and/or services to its Clients.
- B The Client agrees to acquire the product and/or services set out in any Order Form, on the terms below

Now it is agreed as follows:

1 Definitions and interpretation

1.1. Definitions

In this Agreement, unless the context requires otherwise:

Agreement includes these terms, the Order Form and (where applicable) a Statement of Work.

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.

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

Client Site means the location or locations at which Hardware Products will be delivered and the Services will be accessed/provided as specified in the Order Form.

Commencement Date means the date the Client notifies ZIRILIO of its acceptance of the Order Form.

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;

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.

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 ZIRILIO.

Client means the company, person, or other entity named as the Client or client in the Order Form.

Client Data means all data and information input or generated on behalf of the Client in connection with the Services.

Data Breach means unauthorised access, use or disclosure of the Client Data.

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 Order Form, relevant Documentation, SOW or this Agreement.

Deliverable means any item or material which is brought, or required to be brought into existence by or on behalf of ZIRILIO, and delivered to the Client under an SOW.

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

Documentation means any user manual or other operational documentation provided by the manufacturer of the Hardware Products or the licensor of the Licensed Software, and any modifications of such documentation.

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

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

Fees means the fees payable by the Client to ZIRILIO as specified in the Order Form and also includes any expenses payable by the Client 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 Order Form which ZIRILIO must supply to the Client.

Hardware Products means the particular computer hardware and related accessories (if any) described in the Order Form which ZIRILIO will supply to the Client.

Hardware Support Plan means the support for Hardware as described in the Order Form which ZIRILIO must supply to the Client

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

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 Order Form, which the Client must source from a third party.

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

Licensed Software Support Plan means the software support for Licensed Software as described in the Order Form which ZIRILIO must supply to the Client.

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.

Managed Services means the services whereby ZIRILIO either manages certain information technology of the Client and/or manages the delivery of services by other parties for the benefit of the Client and includes monitoring services.

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

New IP means any Intellectual Property Rights that are brought into existence in the course of creating a Deliverable by or on behalf of ZIRILIO.

Order Form means the written order form which has been accepted by the Client that describes any of the:

- (a) Hardware Products;
- (b) Hardware Installation Service;
- (c) Hardware Support Plan;
- (d) Software Installation Service;
- (e) Licenced Software Licence;
- (f) Licensed Software Support Plan;
- (g) Professional Services; and
- (h) Managed Services;

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

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.

Professional Services means the professional, consulting or related services which ZIRILIO must supply to the Client as described in the Order Form or related SOW.

Services means:

- (a) the Hardware Installation Service;
- (b) the Software Installation Service;
- (c) the Professional Services; and
- (d) the Managed Services;

which the Order Form requires ZIRILIO to provide to the Client.

Software means the Licensed Software.

Software Installation Services means the Software Installation service for the relevant Licensed Software as described in the Order Form, which ZIRILIO must supply to the Client.

Statement of Work or **SOW** means each document executed by ZIRILIO and the Client that specifies Deliverables resulting from Professional Services or Software Installation Services. Each SOW will be in a form mutually agreed upon by the parties, and is incorporated by this reference. This Agreement does not create any obligation upon either party to enter into a specific SOW or a minimum number of SOWs.

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.

Term has the meaning provided by clause 2.

Warranty Period means unless specified otherwise in the Order Form, 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.

1.1. Interpretation – order of precedence

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

- (a) an Order Form;
- (b) a Statement of Work (if any); and
- (c) these standard terms,

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. Term

This Agreement commences on the Commencement Date and will continue until the parties have completed the performance of their obligations under this Agreement or until terminated in accordance with clause 0 of this Agreement.

3. Hardware Products

This clause 0 only applies if ZIRILIO is required by the Order Form to supply the Client with Hardware Products and/or a Hardware Product Support Plan.

3.1. Supply of Hardware Products

- (a) ZIRILIO will supply the Client with the Hardware Products specified in the Order Form in accordance with this Agreement.
- (b) ZIRILIO will also make the Documentation supplied by the manufacturer of the Hardware Products available to the Client.
- (c) The manufacturers of the Hardware Products will retain all Intellectual Property Rights in the Documentation supplied with the Hardware Products.

3.2. Delivery of Hardware Products

- (a) ZIRILIO will use reasonable endeavours to deliver the Hardware Products to the Client at the Client Site by the applicable Delivery Date.
- (b) If the Client requires a Hardware Product to be delivered to a location other than the Client Site or the Client requests delivery of a Hardware Product to be made in advance of its Delivery Date or postponed beyond its Delivery Date, the Client must make its request in writing to ZIRILIO no later than 10 Business Days (or such other period as is agreed) prior to the Delivery Date. ZIRILIO 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 Client must ensure it is ready to receive delivery of the Hardware Products at the Client Site on the Delivery Date. The Client 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 Order Form or SOW. If the Client considers that there is a deficiency in the number, specification or condition of the Hardware Products delivered it must notify ZIRILIO 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. ZIRILIO 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) ZIRILIO is not responsible for unpacking the Hardware Products, disposing of packaging material or installing the Hardware Products unless specifically required under the Order Form.

3.3. Defects

- (a) ZIRILIO does not represent or warrant that the Hardware Product will be free from Defects.
- (b) Subject to clause 16.2, if the Hardware Product has a Defect, the Client's entitlement to any warranty will be as set out by the manufacturer of the Hardware Product in the Documentation. The Client, and not ZIRILIO, will be responsible for requesting service in relation to the Defect unless the Hardware Product is included in the Manages Services ZIRILIO is required to supply the Client under the Order Form.

3.4. Risk and Title

- (a) Risk in the Hardware Products passes to the Client (including for insurance purposes) when the Hardware Products are collected by the Client from ZIRILIO or are delivered to the Client by ZIRILIO (as applicable).
- (b) Notwithstanding delivery and passing of risk, the property in the Hardware Products supplied by ZIRILIO under an Order Form will remain with ZIRILIO until the Client has paid all monies owed by it to ZIRILIO under the Order Form.
- (c) If the Order Form provides that any Hardware Products are to be consigned, rented or leased to a Client, those Hardware Products are and will remain the property of ZIRILIO. As such:
 - (i) the Client must not lend or give the Hardware Products to any person;
 - (ii) the Client must not remove the Hardware Products from the specified area agreed under the Order Form without the written consent of ZIRILIO;
 - (iii) for the avoidance of doubt, clause 3.4(a) applies to any Hardware Products that are consigned, rented or leased to a Client; and
 - (iv) the property in the Hardware Products will remain with ZIRILIO for so long as the Hardware Products are consigned, rented or leased to the Client.

3.5. Personal Property Securities Act 2009 (Cth)

- (a) A term used in this clause 3.5 has the same meaning as in the PPSA.
- (b) For so long as any of the monies owing by the Client to ZIRILIO under this Agreement remain unpaid, or for so long as the Hardware Products are consigned, rented or leased, the Client acknowledges that by virtue of clause 3.4(b) and/or clause 3.4(c) of this Agreement, ZIRILIO 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 ZIRILIO 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 Client agrees to keep the Hardware Products separate from other goods and maintain the labelling and packaging of ZIRILIO so that the Hardware Products are readily identifiable as the property of ZIRILIO.
- (d) The Client will, at ZIRILIO'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 Client to ZIRILIO 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 ZIRILIO;
 - (ii) enabling ZIRILIO to prepare and register a financing statement or financing change statement; or
 - (iii) enabling ZIRILIO to exercise any of its rights or powers in connection with any such Security Interest.
- (e) The Client will promptly provide any information requested by ZIRILIO in connection with any Security Interest granted by the Client to ZIRILIO to enable ZIRILIO to exercise any of its rights or powers or perform any of its obligations under the PPSA.
- (f) The Client 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 ZIRILIO and the Client 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, ZIRILIO is not required to disclose any information of the kind referred to in section 275(1) of the PPSA.
- (i) Anything that the Client is required by ZIRILIO to do under this clause 3.5 must be done by the Client at its own expense. The Client agrees to reimburse on demand ZIRILIO's costs (including all legal and other professional costs on a full indemnity basis) in connection with any action taken by ZIRILIO under or in connection with this clause 3.5.

4. Hardware Installation Service and Hardware Support Plans

This clause 0 only applies if ZIRILIO is required by the Order Form to supply the Client with Hardware Installation Services and Hardware Support Plans.

4.1. Supply of Hardware Installation Service

- (a) ZIRILIO will perform the Hardware Installation Services in accordance with the terms of this Agreement.
- (b) ZIRILIO will endeavour to perform the Hardware Installation Services for the Client in accordance with any applicable Milestone Dates set out in the Order Form.

4.2. Scope of ZIRILIO's obligations

- (a) Unless expressly required under the Order Form, the obligations of ZIRILIO when providing the Hardware Installation Service are confined to installing the Hardware Product which is specified in the Order Form by rendering the Hardware Product ready for the Client'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 Order Form, ZIRILIO is not required to connect the installed Hardware Products to any part of the Client's computer system, migrate any Client Data or install any Client provided software (whether provided by ZIRILIO or not) on to the Hardware Products.

- (b) If the particular Hardware Installation Service specified in the Order Form requires ZIRILIO to connect any Hardware Product to the Client's computer system, migrate any Client Data or install any Client provided software then:
- (i) the obligation of ZIRILIO to connect the Hardware Products will be conditional on all parts of the Client's computer system (including software) being in accordance with the specifications contained in the Order Form or SOW 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 ZIRILIO be responsible for correcting any deficiencies or defects in the Client's computer system;
 - (ii) the obligations of ZIRILIO will not extend to developing any software or software interfaces that may be necessary;
 - (iii) the Client must ensure that its computer system, any relevant data and the Client Site are available in order to facilitate the provision of the Hardware Installation Service;
 - (iv) the Client must provide ZIRILIO 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 Client's computer system and administrator logins and passwords necessary to enable ZIRILIO to provide the Hardware Installation Service;
 - (v) the Client will ensure that its data is backed-up and secure at all times before commencement of the Hardware Installation Service. ZIRILIO is not responsible for backing up any Client Data;
 - (vi) ZIRILIO 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 ZIRILIO for transfer; and
 - (vii) at the completion of the Hardware Installation Service the Client will be solely responsible for ensuring that all transferred data has been correctly transferred without error, corruption or omission and that all Client supplied software which has been installed on the Hardware Products is operating correctly.

4.3. Client Site Preparation

Unless otherwise expressly specified by the Order Form, the Client is solely responsible for making the Client Site ready for the installation of the Hardware Products. Without limiting this clause 4.3 the Client agrees that it is responsible for:

- (a) providing a suitable space at the Client 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.

4.4. Exclusions from the Hardware Installation Service

Unless expressly specified to the contrary in the Order Form, 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 ZIRILIO) 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.

4.5. Defect

- (a) ZIRILIO does not represent or warrant that the Hardware Installation Services will be free from Defects.
- (b) Subject to clause 4.5(d) and clause 16.2, if the Hardware Installation Services has a Defect and the Client notifies ZIRILIO of this Defect during the Warranty Period, then the Client's sole and exclusive remedy for that Defect is that ZIRILIO will use its reasonable efforts and at no cost to the Client rectify the Defect or correct or re-perform the Hardware Installation Services.
- (c) Subject to clause 4.5(d) and clause 16.2, if the Hardware Product has a Defect, then ZIRILIO'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 4.5(c) only applies if ZIRILIO is required under the Order Form to supply the Client with Hardware Installation Services for the relevant Hardware Product.
- (d) ZIRILIO will have no responsibility to assist the Client in respect of a Defect under this clause 4.5 where:
 - (i) the Client has not used the Hardware Product in accordance with its Documentation and its intended purpose;
 - (ii) the Hardware Product has been used on or in conjunction with equipment or software not approved by ZIRILIO;
 - (iii) the Hardware Product has been modified by someone other than ZIRILIO;
 - (iv) the Defect is caused by items not supplied by ZIRILIO or any error or defect in the Client's computer system or physical environment;
 - (v) the Defect is due to a Force Majeure Event; or
 - (vi) the Client is in breach of this Agreement.

4.6. Supply of Hardware Support Plans

- (a) ZIRILIO will provide the Client with the Hardware Software Support Plan.
- (b) The Client acknowledges that ZIRILIO is a reseller of the Hardware Support Plan. The support for the Hardware is provided by the relevant supplier specified in the Hardware Support Plan according to the terms of that plan.
- (c) ZIRILIO is not liable to the Client for the support services described in the Hardware Software Support Plan, however if ZIRILIO is required to supply Managed Services by the Order Form, ZIRILIO may have responsibilities to the Client to manage delivery of the support services.
- (d) The Client's rights and obligations to the support services in respect of the Hardware are as set out in the

Hardware Support Plan.

5. Supply of Licensed Software Licence and Licensed Software Support Plans

This clause 0 only applies if ZIRILIO is required by the Order Form to supply the Client with a Licensed Software Licence and/or a Licensed Software Support Plan.

5.1. Supply of Licensed Software Licence

- (a) ZIRILIO will make the Licensed Software specified in the Order Form available to the Client in accordance with this Agreement and any SOW.
- (b) ZIRILIO will also make the Documentation (where provided by the licensor of that Licensed Software) available to the Client.
- (c) ZIRILIO will use reasonable endeavours to make the Licensed Software available to the Client by the applicable Delivery Date.
- (d) The Client acknowledges that ZIRILIO is a reseller of the Licensed Software Licence, not a licensor. The Licensed Software is licensed to the Client directly by the relevant licensor of that Licensed Software according to the terms of the Licensed Software Licence.
- (e) ZIRILIO does not represent or warrant that the Licensed Software will be free from Defects. Subject to clause 16.2, if the Licensed Software has a Defect, the Client's entitlement to any warranty will be as set out by the licensor of the Licensed Software in the Licensed Software Licence. The Client, and not ZIRILIO, will be responsible for requesting service in relation to the Defect unless that Licensed Software is included in the Managed Services ZIRILIO is required to supply to the Client under the Order Form.
- (f) ZIRILIO is not liable to the Client for the performance of the Licensed Software. The Client's rights and obligations in respect of the Licensed Software are as set out in the Licensed Software Licence.
- (g) ZIRILIO is not responsible for installing the Licensed Software unless the Client has agreed to purchase the Software Installation Service for that Licensed Software.

5.2. Supply of Licensed Software Support Plans

- (a) ZIRILIO will provide the Client with the Licensed Software Support Plan.
- (b) The Client acknowledges that ZIRILIO is a reseller of the Licensed Software Support Plan.
- (c) 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. ZIRILIO is not liable to the Client for the support services described in the Licensed Software Support Plan, however if ZIRILIO is required to supply Managed Services by the Order Form, ZIRILIO may have responsibilities to the Client to manage delivery of the support services.
- (d) The Client's rights and obligations to the support services in respect of the Licensed Software are as set out in the Licensed Software Support Plan.

5.3. Defects

- (a) Subject to clause 5.3(b) and clause 16.2, if the Licensed Software has a Defect, then ZIRILIO'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 only applies if ZIRILIO is required under the Order Form to supply the Client with Software Installation Services for the Licensed Software.

- (b) ZIRILIO will have no responsibility to assist the Client in respect of a Defect under this clause where:
- (i) the Client has not used the Software in accordance with its Documentation and its intended purpose;
 - (ii) the Software has been used on or in conjunction with equipment or software not approved by ZIRILIO;
 - (iii) the Software has been modified by someone other than ZIRILIO;
 - (iv) the Defect is caused by items not supplied by ZIRILIO or any error or defect in the Client's computer system or physical environment;
 - (v) the Defect is due to a Force Majeure Event; or
 - (vi) the Client is in breach of this Agreement.
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6. Supply of Software Installation Service

This clause 6 only applies if ZIRILIO is required by the Order Form to supply the Client with a Software Installation Service.

6.1. Supply of Software Installation Service

- (a) ZIRILIO will perform the Software Installation Service in accordance with the terms of this Agreement and any SOW.
- (b) ZIRILIO will endeavour to provide the Software Installation Services to the Client in accordance with any applicable Milestone Dates set out in any Order Form or SOW.

6.2. Client Data back up

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

6.3. Scope of ZIRILIO's obligations

- (a) Unless expressly required under the Order Form, the obligations of ZIRILIO when providing the Software Installation Service are confined to installing the relevant Software specified in the Order Form by rendering the Software ready for the Client's use by following the installation steps, if any, prescribed by the Documentation supplied with the Software. Unless otherwise expressly required under the Order Form ZIRILIO is not required to integrate the installed Software with any other software or parts of the Client's computer system, migrate any Client Data or install any Client provided software.
- (b) If the particular Software Installation Service specified in the Order Form requires ZIRILIO to integrate the installed Software with any other software or parts of the Client's computer system, migrate any Client Data or install any Client provided software then:
 - (i) the obligations of ZIRILIO will be conditional on all parts of the computer system (including software) being in accordance with the specifications (if any) contained in the Order Form 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 ZIRILIO be responsible for correcting any deficiencies or defects in the Client's computer system;
 - (ii) the obligations of ZIRILIO will not extend to developing any software or software interfaces that may be necessary to complete the Software Installation Service;
 - (iii) the Client must ensure that its computer system, any relevant data and the Client Site are ready and available to ZIRILIO in order to facilitate the provision of the Software Installation Service by ZIRILIO;

- (iv) the Client must provide ZIRILIO 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 Client's computer system and administrator logins and passwords necessary to enable ZIRILIO to undertake its responsibilities;
- (v) ZIRILIO 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 ZIRILIO for transfer; and
- (vi) at the completion of the Software Installation Service the Client will be solely responsible for ensuring that all transferred data has been correctly transferred without error, corruption or omission.

6.4. Exclusions from the Software Installation Service

Unless expressly specified to the contrary in the Order Form, 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 ZIRILIO) 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.

6.5. Defect

- (a) ZIRILIO does not represent or warrant that the Software Installation Services will be free from Defects.
- (b) Subject to clause 5.3(b) and clause 16.2, if the Software Installation Services has a Defect and the Client notifies ZIRILIO of this Defect during the Warranty Period, then the Client's sole and exclusive remedy for that Defect is that ZIRILIO will use its reasonable efforts and at no cost to the Client rectify the Defect or correct or re-perform the Software Installation Services.

7. Professional Services

This clause only applies if ZIRILIO is required by the Order Form to supply the Client with Professional Services.

7.1. Supply of Professional Services

ZIRILIO will provide the Client with the Professional Services in accordance with the terms of this Agreement, the Order Form, and any SOW.

7.2. Defect

- (a) ZIRILIO does not represent or warrant that the Professional Services will be free from Defects.
- (b) Subject to clause 16.2, if the Professional Services has a Defect and the Client notifies ZIRILIO of this

Defect during the Warranty Period, then the Client's sole and exclusive remedy for that Defect is that ZIRILIO will use its reasonable efforts and at no cost to the Client rectify the Defect or correct or re-perform the Professional Services.

8. Managed Services

This clause only applies if ZIRILIO is required by the Order Form to supply the Client with Managed Services.

8.1. Supply of Managed Services

ZIRILIO will provide the Client with the Managed Services in accordance with the terms of this Agreement and the Order Form.

8.2. Defect

Subject to clause 16.2, if the Managed Services has a Defect and the Client notifies ZIRILIO of this Defect during the Warranty Period, then the Client's sole and exclusive remedy for that Defect is that ZIRILIO will use its reasonable efforts and at no cost to the Client rectify the Defect or correct or re-perform the Managed Services.

8.3. Client Responsibilities

- (a) The Client must provide ZIRILIO with full administrative privileged credentials to all devices supported under the Managed Services. The credentials used by ZIRILIO will be unique to any other credentials used by the Client or third party.
- (b) All devices supported under the Managed Services must pass minimum Operational Acceptance Testing (OAT). ZIRILIO assumes that the Client equipment to be supported is at a minimum standard of operational status as verified by the OATs. ZIRILIO will undertake the execution of the OAT. If the equipment to be supported is found by the OAT not to be at the minimal levels of operational status, then activities must be undertaken to rectify the shortcomings prior to ZIRILIO commencing support. These rectification activities are the responsibility of the Client but can be carried out by ZIRILIO as an additional charged activity.
- (c) The Client must formally notify ZIRILIO of all planned outages or changes affecting devices supported under the Managed Services at the time that the Client identifies the requirement for the outage or change. At completion of any changes, the Client will provide updated configuration documentation within 5 working days of the event. The notification should include:
 - (i) the date and time of the change/outage;
 - (ii) the item(s) changed and/or devices impacted;
 - (iii) a description of the change/outage;
 - (iv) why the change or planned outage was undertaken; and
 - (v) a copy of any documentation which must be updated to reflect the change.
- (d) The Client must provide remote connectivity to the network managed under the Managed Services 24 hours a day, 7 days a week.
- (e) If the Client does not have suitable VPN remote connectivity, direct line connectivity may be provided to the ZIRILIO data centre at the Client's cost.
- (f) The Client must provide physical access to the devices supported under the Managed Services for ZIRILIO Personnel 24 hours a day 7 days per week within 4 hours' notice.

9. Obligations

9.1. ZIRILIO obligations

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

9.2. Client obligations

The Client must:

- (a) appoint a representative with responsibility for the Services under this Agreement to be provided by ZIRILIO. The representative shall have the delegated authority of the Client to bind the Client in the performance of its obligations under this Agreement. The Client may change its representative at any time upon written notice to ZIRILIO. Where practicable, the Client will provide ZIRILIO with one month's notice of its intention to change its representative;
 - (b) provide ZIRILIO with access to the documentation, information, equipment, facilities and the Client Site that ZIRILIO reasonably requires to perform the Services, including reasonable and necessary on-line access, electrical power, telephone services and working space as ZIRILIO may reasonably request;
 - (c) provide sufficient, qualified Personnel capable of performing all of its duties and obligations under the Order Form and this Agreement and will provide reasonable access to its relevant Personnel;
 - (d) comply with all applicable occupational health and safety, discrimination and harassment standards and laws and, if occupational health and safety inductions are required, provide the necessary training for ZIRILIO Personnel at no cost to ZIRILIO; and
 - (e) ensure the Client Site is free of any hazardous materials or conditions.
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10. Fees, payments and invoices

10.1. Fees

The Client must pay ZIRILIO the Fees in accordance with this Agreement and the Order Form.

10.2. Out of Scope services

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

10.3. Expenses

In addition to the Fees, the Client must pay ZIRILIO or reimburse ZIRILIO for any expenses which the Client is required to pay or incur under the Order Form or otherwise under this Agreement in order for ZIRILIO to perform this Agreement.

10.4. Invoice and payment

- (a) Subject to the Order Form, ZIRILIO will invoice the Client for the Fees in advance on a monthly basis and will provide the Client with a valid tax invoice.
- (b) The Client must pay the amount invoiced within 14 days of the date of invoice.

10.5. Disputed invoices

If the Client 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
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- (b) give ZIRILIO notice of the dispute and the reasons why the Client disputes the invoice, before the due date for payment of the invoice.

10.6. Default in payment

If the Client 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 10.5, ZIRILIO may (without prejudice to any other remedies to which it is entitled):

- (a) charge the Client 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 from the date 14 days after the date of invoice; and
- (b) suspend performance of ZIRILIO's obligations under this Agreement without any liability to the Client.

10.7. Fees variations

- (a) The Fees are subject to variation as set out in this clause 10.7.
- (b) ZIRILIO may vary the Fees where additional Services, Software or Hardware are requested by the Client in an Order Form or otherwise as agreed between the parties in writing.

11. Taxes

11.1. General

- (a) Unless expressly stated otherwise, all amounts payable are exclusive of any Taxes.
- (b) Subject to clause 11.2, the Client must pay all Taxes in connection with this Agreement.
- (c) If the law requires the Client to make a deduction or withholding for or on account of Taxes from a payment, the Client must pay ZIRILIO an additional amount so that ZIRILIO receives an amount equal to the payment which would have been paid had no deduction or withholding been made.

11.2. GST

- (a) A term used in this clause 11.2 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 11.2(b) if the amount payable is Consideration for a Taxable Supply.

12. Confidentiality

12.1. 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.

12.2. 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.

12.3. 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.

12.4. 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.

13. 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 Client discloses any Personal Information to ZIRILIO, the Client warrants that it has given all necessary notifications and has obtained all necessary consents required to disclose that information to ZIRILIO and to enable its lawful use by ZIRILIO.

14. Client Data Security

14.1. General

- (a) As between the Parties, the Client owns all right, title and interest in and to all the Client Data.
- (b) The Client is solely responsible for the accuracy, quality, integrity, legality, reliability, classification, and intellectual property right to use Client Data and must obtain and maintain all consents necessary for using and processing the Client Data in accordance with this Agreement.
- (c) The Client will indemnify ZIRILIO from and against any loss arising directly or indirectly from any Claim that the Client Data or the manner in which the Client Data is collected, used or communicated:
 - (i) infringes a third party's rights;
 - (ii) is obscene, offensive or defamatory.

14.2. Client Data Security Obligations on ZIRILIO

- (a) ZIRILIO must maintain appropriate technical and organisational security measures to protect Client Data against:
 - (i) accidental destruction, loss, and alteration as a result of the provision of any Services; and

- (ii) unauthorised disclosure of, or access to, Client Data transmitted, stored or otherwise processed in the course of providing Services under this Agreement.
- (b) Notwithstanding clause 14.2(a) ZIRILIO is not liable for any Loss which the Client may suffer as a result of any Client Data that has been deleted, destroyed or otherwise lost as a result of any of the Services, Software or Hardware Products supplied under this Agreement.

14.3. Data Breach Incidents

Either Party must as expeditiously as possible after discovery, and at least with sufficient time to allow compliance with the relevant law, notify the other Party of any Data Breach. In the event of a Data Breach, each Party must take such steps as are necessary to:

- (a) promptly mitigate the effects of such Data Breach and prevent any recurrence;
- (b) comply with applicable laws relating to such Data Breach including the timeframe for reporting a Data Breach where necessary; and
- (c) provide prompt and reasonable assistance to the other party in relation to the assessment and response to the Data Breach.

14.4. Client Data Transfer

In the course of providing the Services ZIRILIO will:

- (a) store and process all Client Data in a single geographical region as specified on an Order Form; and
- (b) not transfer Client Data out of that region.

14.5. Client Data on termination

ZIRILIO will delete all Client Data in its possession or control within 30 days of termination of this Agreement.

15. 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 Client grants to ZIRILIO a non-exclusive, irrevocable, royalty-free licence to use the Client's Existing IP during the Term for the purpose of performing its obligations under this Agreement.
- (c) To the extent that any Deliverable incorporates any of ZIRILIO's Existing IP or New IP, ZIRILIO grants to the Client a non-exclusive, royalty-free licence to use ZIRILIO's Existing IP or New IP to enable the Client to use the Deliverable.
- (d) Despite any other clause in this Agreement, where anything supplied under this Agreement contains Intellectual Property Rights owned by a third party (e.g. Licensed Software or Documentation for Licensed Software), this Agreement does not transfer ownership of such Intellectual Property Rights to the Client and the applicable third party will retain all Intellectual Property Rights in the thing supplied.

16. Implied Terms

16.1. 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.

16.2. Non-Excludable Guarantee

If the Client is a consumer as defined in the Australian Consumer Law (**ACL**), the Services and any goods come with guarantees that cannot be excluded under the ACL. For major failures with the Service, the Client is entitled:

- (a) to cancel this Agreement; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

The consumer is also entitled to choose a refund or replacement for major failures with goods.

The consumer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the consumer is entitled to have problems rectified in a reasonable time and if this is not done, the consumer is entitled to a refund for the goods and to cancel the Agreement and obtain a refund for the unused portion of the Agreement (if any).

17. Liability

17.1. No reliance on representations

- (a) The Client warrants that it has not relied on any representation or warranties made by ZIRILIO 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 ZIRILIO.
- (b) The Client acknowledges that to the extent ZIRILIO has made any representation or warranty which is not otherwise expressly stated in this Agreement, the Client has been provided with an opportunity to independently verify the accuracy of that representation or warranty.

17.2. Limitation of Liability

Subject to clause 16.2, ZIRILIO will be under no liability to the Client or any other person in respect of:

- (a) any Loss that is directly or indirectly caused by or results from any wilful, unlawful or negligent act or omission of the Client or any of its Personnel;
- (b) any 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 Client under or in connection with this Agreement (whether arising under contract, in tort (including negligence) or otherwise).

17.3. Liability cap

- (a) Subject to clause 16.2, the maximum aggregate liability of a party 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 Client to ZIRILIO under this Agreement in the 12 months preceding the event that gives rise to the Claims or Losses.
 - (b) The cap on a party's liability in this clause does not apply to any injury or death to a person, any breach of clause 0 or any infringement of a third party's Intellectual Property Rights or Loss that is directly or indirectly caused by or results from any wilful, unlawful or negligent act or omission of that party or its Personnel..
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17.4. Indemnity

- (a) The Client will at all times indemnify and hold harmless ZIRILIO and its Personnel (**ZIRILIO Indemnified Parties**) from and against any Loss reasonably incurred or suffered by any of the ZIRILIO Indemnified Parties arising from any Claim against the ZIRILIO Indemnified Parties where such Loss was caused by:
 - (i) a breach by the Client of its obligations under this Agreement;
 - (ii) the Client's failure to access to and use of Software; or
 - (iii) any wilful, unlawful or negligent act or omission of the Client or any of its Personnel.
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18. Termination

18.1. Termination by ZIRILIO

- (a) ZIRILIO may terminate its provision of all or any of the Services or Software under any Order Form and this Agreement upon 90 days' written notice of termination to the Client.
- (b) Without limiting the generality of any other provision in this Agreement, ZIRILIO may suspend and/or terminate its provision of all or any of the Services or Software under any Order Form and this Agreement immediately by written notice if the Client:
 - (i) 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;
 - (ii) fails to pay an amount owing under this Agreement as provided in clause 10.6(b); or
 - (iii) 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 Client fails to remedy the breach within 15 Business Days of receiving notice requiring it to do so.

18.2. Termination by Client

The Client may terminate this Agreement immediately by written notice if ZIRILIO:

- (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 ZIRILIO fails to remedy the breach within 15 Business Days of receiving notice requiring it to do so.

18.3. 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) the Client must pay ZIRILIO all amounts payable as at expiry or termination (including early termination charges specified in the Order Form) and any amount which would have become payable but for that termination or expiry;
 - (iii) ZIRILIO may charge for all costs, disbursements and expenses, reasonably incurred in expectation of performing all of the requirements of the Order Form (except to the extent the Client has already paid the applicable Fees for those items); and
 - (iv) all rights that a party has accrued before termination continue.
- (b) Clauses 1, 0, 0, 0, 0, 0, 18.3, 0, 0, 0 and 0 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.

19. Personnel

The parties must not, during the Term and for 6 months after the expiry or termination of this Agreement, directly or indirectly solicit for employment or engagement the services of any of the other party's Personnel involved in the performance of this Agreement.

20. Dispute resolution

- (a) The parties agree to use best endeavours to resolve in good faith any matters arising out of or relating to this Agreement including with regard to its existence, validity or termination.
 - (b) Each party must follow the procedures in this clause 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.
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21. Insurance

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

- (a) Public Liability: \$20,000,000 per event and in annual aggregate;
 - (b) Professional Indemnity: \$5,000,000 per event and \$10,000,000 in annual aggregate; and
 - (c) Workers Compensation: to the extent required by law.
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22. 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.
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- (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.
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23. Delivery and delays

- (a) ZIRILIO will use its reasonable endeavours to meet the Milestone Date or any other date agreed under this Agreement, an Order Form or an SOW but does not guarantee it will do so.
 - (b) Without limiting this clause, ZIRILIO 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 Client with this Agreement, an applicable Order Form or SOW, the late supply or provision of instructions and information by the Client, delays in obtaining access to the Client Site or any other delays caused by the Client's third party suppliers and contractors.
 - (c) ZIRILIO will be entitled to extension of time in respect of any 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 0.
 - (d) If the Order Form specifies any service credits payable for the non-achievement of any service levels, those service credits are the Client's sole and exclusive remedy for the non-achievement of the applicable service levels.
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24. 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 Order Form 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.
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25. 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:

- (i) 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 Order Form;
 - (ii) if the Receiving Party accepts the variations, the Agreement will be deemed to be so amended from the date of acceptance; and
 - (iii) if the Receiving Party rejects the proposed variations, each party will perform the Agreement in accordance with the unvaried terms.
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26. Audit

- (a) ZIRILIO will provide the Client with reasonable access to data, records, and documents, to enable Client to conduct an assessment of ZIRILIO's risk management systems, information security capability, business processes, and the design and operating effectiveness of ZIRILIO's internal control systems, subject to prior agreement of audit scope, and ensuring that the necessary diversion of ZIRILIO's resources does not have a material impact on other clients or breach the confidentiality of other clients;
 - (b) ZIRILIO will comply with all reasonable requests of the Client's internal auditors, or other suitably qualified contracted representatives of the Client subject to them signing a confidentiality undertaking, to engage directly with ZIRILIO to assess the information security control assurance provided by ZIRILIO;
 - (c) The Client agrees that an audit and inspection under this clause is limited to once in any calendar year during the Term.
 - (d) If an audit or inspection reveals that ZIRILIO or its subcontractor is not complying with any Privacy Laws or with this Agreement, ZIRILIO must promptly take, and must ensure that the relevant subcontractor promptly takes, such action as is necessary to remedy the non-compliance.
 - (e) The Client will be responsible for the full cost of audits that the Client initiates under this Agreement, including ZIRILIO's costs.
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27. Miscellaneous

27.1. The Client acknowledges that ZIRILIO may subcontract the performance of all or part of its obligations under this Agreement.

27.2. 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.

27.3. 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.

27.4. 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.

27.5. 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.

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

27.7. 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.

27.8. 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.

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