

Subscription Services Standard Terms

Recitals

- A This Agreement sets out the standard terms used by ZIRILIO to provide various services to its Clients.
- B The Client agrees to acquire the 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 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 Data means all information, images, documentation and other data uploaded to the Technology via the Subscription Service by or on behalf of the Client.

Client Environment means the Client's facilities, equipment, software or infrastructure as specified in the Order Form.

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

Commencement Date means the date stated on an Order Form or if not date is stated then the date an Order Form is signed by the party which signs second.

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.

Configuration Guide means a written guide for the configuration of the Client's (or third party's) facilities, equipment, software or infrastructure in order to access the Subscription Services, as used by ZIRILIO, if nominated in an Order Form which forms part of this Agreement.

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.

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 Subscription 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.

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).

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.

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 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) Subscription Services;
- (b) Support Services; or
- (c) Professional Services;

which are to be supplied by ZIRILIO to the Client under 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.

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 to the Subscription Services or Support Services which ZIRILIO must supply to the Client as described in the Order Form or related SOW.

Purposes means the purposes for which the Client requires the Subscription Services as described in the Order Form.

Relevant Clause means either clause 3 or 4 for the provision of Subscription Services as nominated in the Order Form.

Services means:

- (a) the Subscription Services;
- (b) the Support Services; and
- (c) the Professional Services,

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

Subscription Services means access to and use of the Technology described in the applicable Order Form for the Purposes described in the Order Form.

Support Services means the technical support in relation to use and operation of the Subscription Services available on the terms set out in the attachment to the Order Form.

Statement of Work or **SOW** means each document executed by ZIRILIO and the Client that specifies Deliverables resulting from Professional 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.

Technology means the computer hardware and computer software ZIRILIO uses to provide the Subscription Services as set out in the Order Form and may be ZIRILIO Hardware and ZIRILIO Software.

User Documentation means any manuals, guides, reference materials or similar documents in any form or media made available by ZIRILIO to the Client in connection with the Subscription Service.

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.

ZIRILIO Hardware means the particular computer hardware and related accessories (if any) used by ZIRILIO on the Site to provide the Subscription Services.

ZIRILIO Software means the particular computer software (if any) used by ZIRILIO on the Site to provide the Subscription Services.

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);
- (c) a Configuration Guide, and
- (d) 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 terminated in accordance with clause 17 of this Agreement.

3. Remote Access Subscription Service

3.1. Provision of Subscription Services

If this clause 3 is nominated the Relevant Clause, effective upon the Parties' execution of an applicable Order Form, ZIRILIO will provide the Client access to the Subscription Services and the Technology which provides the Subscription Services, for the Purpose being the Client's internal business purposes only, during the Term.

3.2. Client Supplies

The Client acknowledges that in order to receive the Subscription Services, the Client must procure and maintain all goods, services, equipment, hardware and software necessary to receive the Subscription Services, including those specified or described in the Order Form.

4. On-Site Subscription Service

This clause only applies if ZIRILIO is required to provide the Subscription Service by installing ZIRILIO Hardware and/or ZIRILIO Software in the Client Environment and this clause 4 is the nominated Relevant Clause.

4.1. General

- (a) The Client must allow ZIRILIO to keep ZIRILIO Hardware and ZIRILIO Software including system and network diagnostics, maintenance programs and system operational software, resident on the Client Environment and/or Client Site solely for ZIRILIO's use in performing the Subscription Services. ZIRILIO must comply with the Client's reasonable requirements relating to access, security and notification.
- (b) ZIRILIO will provide installation services as a Professional Service under this Agreement.

4.2. Title and Ownership

- (a) The Client acknowledges that it has no right of title or ownership in ZIRILIO Hardware or ZIRILIO Software and must not represent to any third party that it owns the ZIRILIO Hardware or ZIRILIO Software.
- (b) If requested by ZIRILIO, the Client must at its own expense, affix in a prominent position to ZIRILIO Hardware and ZIRILIO Software in its possession or control, any tags or labels to indicate ownership by ZIRILIO or ZIRILIO's financiers of such ZIRILIO Hardware and ZIRILIO Software if ZIRILIO provides such tags or labels to the Client for this purpose.
- (c) The Client must ensure that ZIRILIO Hardware and ZIRILIO Software in its possession or control:
 - (i) do not become fixtures or removed from the location being used without ZIRILIO's prior written consent; and
 - (ii) are clear of liens, mortgages and other encumbrances.
- (d) ZIRILIO agrees that the Client may move mobile equipment (such as laptop computers) in the ordinary course of business.

4.3. Personal Property Securities Act 2009 (Cth) ('PPSA')

- (a) In this clause 4.3 "PPSA" means the Personal Property Securities Act 2009 (Cth).
- (b) The Client acknowledges and agrees that:
 - (i) ZIRILIO may register each security interest in its favour in relation to the ZIRILIO Hardware or ZIRILIO Software or otherwise on the Personal Property Securities Register created under the PPSA;
 - (ii) ZIRILIO need not give any notice to the Client under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded;
 - (iii) to the maximum extent permitted, all provisions listed in sections 115(1) and 115(7) of the PPSA (except section 135) are excluded in full and will not apply to that security interest; and
 - (iv) if the Client does anything contrary to clause 4.3(c) and ZIRILIO has not authorised that dealing with the ZIRILIO Hardware and or ZIRILIO Software, ZIRILIO's security interest in relation to it continues.
- (c) **The Client must not:**
 - (i) assign, encumber or otherwise deal with the ZIRILIO Hardware or ZIRILIO Software, or agree or attempt to do so, without ZIRILIO's written consent. ZIRILIO may assign, encumber or otherwise deal with ZIRILIO's rights in any way (subject to the Client's rights under this Agreement);
 - (ii) sub-lease, hire or otherwise part with possession of the ZIRILIO Hardware or ZIRILIO Software or dispose of it; or
 - (iii) create any lien or other encumbrance over the ZIRILIO Hardware or ZIRILIO Software or allow one to exist (other than in ZIRILIO's favour).

4.4. Maintenance

- (a) The Client acknowledges that it is responsible for the operation and maintenance of ZIRILIO Hardware and ZIRILIO Software in its possession or control (except to the extent ZIRILIO is responsible for such operation and maintenance as specified under this Agreement).

- (b) The Client must at all times operate and maintain ZIRILIO Hardware and ZIRILIO Software in good working order, repair, condition and appearance (fair wear and tear excepted), and in accordance with the Documentation.
- (c) The Client acknowledges that ZIRILIO may (with reasonable notice), enter the Site during the Client Business Hours to inspect and observe the use of ZIRILIO Hardware and ZIRILIO Software. ZIRILIO must comply with the Client's reasonable directions regarding access.

4.5. Client Obligations

The Client must:

- (a) provide ZIRILIO with access to the documentation, information, equipment, facilities and the Client Site that ZIRILIO reasonably requires to perform install the ZIRILIO Hardware and ZIRILIO Software including reasonable and necessary on-line access, electrical power, telephone services and working space as ZIRILIO may reasonably request;
- (b) provide physical access to the devices supported under the Support Services for ZIRILIO Personnel 24 hours a day 7 days per week within 4 hours' notice;
- (c) ensure the Client Site is free of any hazardous materials or conditions;
- (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) provide written notice to ZIRILIO of all planned outages or changes affecting the Client Environment or devices supported under the Support Services at the time that the Client identifies the requirement for the outage or change. At completion of any outage or change, the Client must provide updated configuration documentation within 5 working days. 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.

4.6. Damage and Alteration

- (a) The Client must not make any alterations or additions to any ZIRILIO Hardware and ZIRILIO Software in its possession or control without ZIRILIO's prior written consent. Any additions which have not been removed prior to return of ZIRILIO Hardware and ZIRILIO Software by the Client under this Agreement will become ZIRILIO's property.
- (b) The Client is responsible for risk of loss or damage for any ZIRILIO Hardware and ZIRILIO Software in its possession or control until returned to, or collected by, ZIRILIO.
- (c) If any ZIRILIO Hardware or ZIRILIO Software in the Client possession and control is condemned, taken, lost, destroyed, stolen or damaged beyond economical repair ZIRILIO will (at the Client's cost) replace the equipment with substantially equivalent or better items of hardware or software having greater capabilities and equal or greater fair market value and manufactured or licensed by ZIRILIO or the same manufacturer or licensor as the original

ZIRILIO Hardware or ZIRILIO Software.

4.7. Return of ZIRILIO Hardware and ZIRILIO Software

- (a) Within 15 days of such termination of this Agreement, the Client must return all ZIRILIO Hardware and ZIRILIO Software in its possession and control to ZIRILIO at a location in Australia specified by ZIRILIO or else allow ZIRILIO access to the Client Site to repossess the ZIRILIO Hardware and ZIRILIO Software.
- (b) The ZIRILIO Hardware and ZIRILIO Software must be returned to ZIRILIO in the same condition and working order as when delivered to the Client (fair wear and tear excepted).

5. Technical Support

5.1. Services

During the Term and on the condition that the Client has paid all undisputed fees due and owing to ZIRILIO and is otherwise in material compliance with the terms of this Agreement, ZIRILIO will provide the Support Services to the Client described in the Order Form and the relevant attachment to the Order Form.

5.2. Other Services

The Client acknowledges that the Support Services described in the relevant attachment to the Order Form are the only technical or user support ZIRILIO will provide the Client as part of the Subscription Services.

5.3. User Documentation

ZIRILIO may provide User Documentation to the Client in respect of access and use of the Subscription Service in which case the Client must only use the most recent version of the User Documentation and must follow ZIRILIO's instruction about destroying or returning superseded versions.

5.4. Updates

During the Term, ZIRILIO may release or install updates, patches, bug fixes, new releases or new versions in respect of the Technology used to supply the Subscription Services.

5.5. Contacts

Each Party must appoint a contact person for each Order Form, as specified in such Order Form, who will be the other Party's principal contact to resolve issues related to the Support Services. Either Party may change its contact person by providing notice thereof to the other Party. The Client must designate one person to be responsible for administering its account and all its users.

6. Client Data Security

6.1. 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.

6.2. 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 the Subscription Services; and
 - (ii) unauthorised disclosure of, or access to, Client Data transmitted, stored or otherwise processed as set forth in this Agreement.
- (b) Notwithstanding clause 6.2(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 the Client's use of the Subscription Service.

6.3. 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.

6.4. Client Data Transfer

The Subscription Services are self-service products in which only the Client determines what data to collect, from whom, from where, for what purpose, and when to delete it. 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.

6.5. Client Right to Access Client Data

Upon the termination of all Subscription Services, ZIRILIO will make available to the Client a portal by which the Client may download and delete Client Data for a period of 30 days. ZIRILIO is not required to retain Client Data after such 30-day period has ended.

7. Defects

- (a) ZIRILIO does not represent or warrant that the Subscription Service will be uninterrupted or free from Defects or errors.
- (b) Subject to clause 15.2, if the Subscription Service has a Defect and the Client notifies ZIRILIO of this Defect, 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 Subscription Services.
- (c) 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 Subscription Service in accordance with the User Documentation and its intended purpose;
- (ii) the Subscription Service has been used on or in conjunction with equipment or software not approved by ZIRILIO;
- (iii) the Defect is caused by items not supplied by ZIRILIO or any error or defect in the Client's facilities, equipment, software or infrastructure;
- (iv) the Defect is due to a Force Majeure Event; or
- (v) the Client is in breach of this Agreement.

8. Obligations and representations

8.1. ZIRILIO obligations

ZIRILIO must:

- (a) provide the Subscription Services with due care and skill and in accordance with this Agreement and all applicable laws and regulations;
- (b) use commercially reasonable efforts to ensure that any updates will not introduce any Harmful Code that could disrupt any software or system used by the Client in connection with the Subscription Services; and
- (c) ensure that the Subscription Services will materially comply with the Order Form.

8.2. Client obligations

The Client must:

- (a) appoint a representative with responsibility for the Services under this Agreement. The representative must 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) access and use the Subscription Services and the Technology only for internal business purposes as contemplated by this Agreement;
- (c) only use and copy the User Documentation to the extent necessary to use and receive the Subscription Services;
- (d) comply with all reasonable policies regarding the use of the Subscription Services which ZIRILIO notifies the Client of from time to time;
- (e) not distribute any part of the User Documentation or Subscription Services for commercial purposes or otherwise permit direct or indirect access to or use of the Subscription Service in a way that violates this Agreement;
- (f) not modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the Technology, nor create derivative works from all or part of the Technology;
- (g) not attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the Technology;

- (h) not upload to the Subscription Service and the Technology, any Harmful Code or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the Subscription Service or the software or hardware of ZIRILIO or any third party;
- (i) not use the Subscription Service to
 - (i) send irrelevant or inappropriate messages to third parties (eg spam);
 - (ii) send or store Harmful Code or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the Subscription Service or the software or hardware of ZIRILIO or any third party; or
 - (iii) upload content that
 - (A) infringes, misappropriates, or otherwise violates any third party's intellectual property right; or
 - (B) aggravates, harasses, threatens, defames or abuses ZIRILIO or third parties;
- (j) provide direct line connectivity to the ZIRILIO data centre at the Client's cost if the Client does not have suitable VPN remote connectivity; and
- (k) provide reasonable written notice to ZIRILIO before introducing new products, network components or devices to the Client Environment which may reasonably be expected to impact in any way upon the provision by ZIRILIO of the Subscription Services.

8.3. Client **representations**

The Client represents and warrants that:

- (a) all documentation and information regarding the Client Environment provided by the Client to ZIRILIO before and during the Term for use in connection with the Services supplied to ZIRILIO under this Agreement will be true, accurate, complete, up-to-date and not misleading or deceptive;
- (b) all documentation and information regarding the Client Environment provided by the Client to ZIRILIO before and during the Term and the use of such materials and information in accordance with this Agreement shall comply with applicable law, regulations, guidelines or codes of practice and shall not infringe the Intellectual Property Rights of any other person;
- (c) it has obtained all necessary rights, licences and consents to allow ZIRILIO to use all documentation and information regarding the Client Environment in accordance with this Agreement;
- (d) it has in place suitable and compatible equipment, networks and software to receive the Services; and
- (e) the Client Environment and any other equipment or networks which connect to Client Environment do not contain Harmful Code, software, viruses or any other computer code, files or programmes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.

9. Professional Services

This clause 9 only applies if ZIRILIO is required by the Order Form to supply the Client with Professional Services.

9.1. 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.

9.2. Defect

- (a) ZIRILIO does not represent or warrant that the Professional Services will be free from Defects.
- (b) Subject to clause 15.2, if the Professional Services has a Defect and the Client notifies ZIRILIO of this Defect, 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.

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
- (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 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. 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, 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.

15. Implied Terms

15.1. 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.

15.2. 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).

16. Liability

16.1. 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.

16.2. Limitation of Liability

Subject to clause 15.2, 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).

16.3. Liability cap

- (a) Subject to clause 15.2, 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 12, 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.

16.4. 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 the Subscription Services in accordance with the User Documentation; or
- (iii) any wilful, unlawful or negligent act or omission of the Client or any of its Personnel.

17. Termination

17.1. Termination by ZIRILIO

- (a) ZIRILIO may terminate the supply of all or any product or service the subject of an Order Form under this Agreement or 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 the supply of all or any product or service the subject of an Order Form under this Agreement or 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 due and payable under this Agreement; 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.
- (c) The termination of a supply the subject of an Order Form by ZIRILIO under the preceding clauses 17.1(a) and 17.1(b) will not terminate this Agreement and without limiting any rights of ZIRILIO, this Agreement will continue to operate in respect of all other supplies the subject of continuing or new Order Forms.

17.2. Termination by the Client

- (a) The Client may terminate the Subscription Services under this Agreement after 3 months from the Commencement Date on the following conditions:
 - (i) the Client must provide ZIRILIO with 90 days' written notice of termination;
 - (ii) the Client must continue to make the payments for the monthly fee for the Subscription Services as described in the Order Form until the end of the 90-day notice period; and
 - (iii) the Client must pay an amount equal to the outstanding amortised transition costs is paid to ZIRILIO at the end of the 90-day notice period. This amount will be calculated using the following formulae:
 - $$T = X * (\$ \text{Monthly fee} \times 70\%)$$
 - X = The Number of Months remaining in the contract from the 90 days' notice period.
 - T = Total amount payable.
- (b) The Client may terminate this Agreement immediately by written notice if ZIRILIO 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.
- (c) The Client may terminate immediately by written notice the supply of any product or service

the subject of an Order Form under this Agreement where ZIRILIO:

- (i) commits a breach of this Agreement as it relates to that supply; and
 - (ii) fails to commence action to remedy the breach within 15 Business Days or such longer time frame as is reasonable given all the circumstances, after receiving notice requiring it to do so, provided that if the remedial action is dependent on a service or product from a third party then the period to remedy the breach will be extended but whatever time is required to allow ZIRILIO time to source that service or product.
- (d) The termination of a supply the subject of an Order Form by the Client under the preceding clause 17.2(c) will not terminate this Agreement and without limiting any rights of the Client, this Agreement will continue to operate in respect of all other supplies the subject of continuing or new Order Forms.

17.3. 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, 12, 13, 14, 15, 16, 17, 18, 19, 23 and 25 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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 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 21.
- (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.

23. 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.

24. 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.

25. 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.

26. Miscellaneous

- 26.1. The Client acknowledges that ZIRILIO may subcontract the performance of all or part of its obligations under this Agreement.
- 26.2. 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.
- 26.3. 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.
- 26.4. 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.
- 26.5. 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.
- 26.6. 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.
- 26.7. 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.
- 26.8. 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.
- 26.9. This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.