



Spirit General Terms

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1. Structure of Agreement

1.1 Documents and interaction

This Agreement comprises:

- (a) any Orders;
- (b) these General Terms;
- (c) any applicable Critical Information Summary or other Product Schedule;
- (d) any applicable Service Levels;
- (e) any other document incorporated by reference by this Agreement or by the Parties' written agreement from time to time.

Unless expressly stated otherwise, if any of these documents is inconsistent with any other, then the documents will prevail in the order listed above.

2. Term

- (a) This Agreement starts on the Commencement Date and continues for the Minimum Term. At the expiry of the Minimum Term the Agreement will continue until terminated by either Party by providing thirty (30) days' written notice.
- (b) If no Minimum Term is specified, the Agreement will continue until terminated by either Party by providing thirty (30) days' written notice.

3. Products

3.1 Supply by Spirit

- (a) Spirit offers the Products specified in an Order.
- (b) In consideration for payment of the Charges, Spirit will provide the Customer with the Products specified in any Order.
- (c) Spirit will supply the Products in a professional and workmanlike manner, in accordance with industry standards enforceable by law and any applicable Product Schedule.

3.2 Installation and delivery

- (a) Spirit may, in its absolute discretion:
 - (i) not commence work on providing any Products until the Customer has paid any upfront Charges or deposit payable for the Products; and
 - (ii) withhold delivery of the Products (including any Hardware) until the Customer has paid each invoice for the Products.
- (b) Spirit will advise the Customer of the date Spirit expects to install and deliver the Products and will use reasonable efforts to meet that target. Any service installation or delivery date is a target only, and Spirit will not be responsible for any failure to meet that target or for any loss or damage to the Customer or anyone incurred as a result of the failure to meet the target.

3.3 Use of Products

- (a) The Customer must only use the Products in accordance with the terms specified in this Agreement and any applicable law.
- (b) The Customer accepts full risk and responsibility for all use of the Products and is responsible for all Charges payable in relation to the use of the Products, whether or not such use was authorised by the Customer.
- (c) Where applicable, the Products are only provided for the number of permitted users specified in an Order. The Customer must notify Spirit if the number of permitted users increases, as this may affect the Charges payable by the Customer.

3.4 Service Levels

Spirit will supply the Products in accordance with the Service Levels and the terms in any applicable Product Schedule. The Customer's sole remedy for any failure by Spirit to meet a Service Level is the Service Level Credit (if any) specified in the Service Levels and the Customer waives any right to any additional remedy.

3.5 Third Party Providers

If the Products involve Spirit sourcing a license, good or service from a Third Party Provider:

- (a) third Party terms & conditions (**Third Party Terms**) may apply. The Customer agrees to any Third Party Terms applicable to any Third Party Provider license, good or service that is used in delivering the Products, and Spirit will not be liable for any loss or damage suffered by the Customer in connection with such Third Party Terms; and
- (b) any request by the Customer for support in relation to any license, good or service sourced by Spirit from a Third Party Provider must be directed by the Customer to Spirit, including for support regarding performance, functionality, a fault, a defect or for any request for a license upgrade. In such case, Spirit will engage with the Third Party Provider and provide any direction relating to the supply of support or upgrade.

3.6 Additional Products

If the Customer requires additional Products, a new Order must be completed and signed by the Parties.

3.7 Variations to Products

If the Customer requests a variation of any Product it may provide a notice describing the change in character or content requested. Upon receiving such notice, Spirit (acting reasonably) must notify the Customer of the terms under which it will agree to any variation, or if it rejects the variation why it is not accepted.

4. Hardware

4.1 Risk and Ownership

Where an Order for Products includes purchasing Hardware:

- (a) risk of loss or damage will transfer to the Customer on delivery of the Hardware;
- (b) ownership of the Hardware will transfer to the Customer on payment of all Charges in cleared funds;
- (c) if Hardware is delivered to the Customer before ownership passes to the Customer, then until ownership passes to the Customer, the Customer must insure and keep the Hardware insured with an insurer of recognised standing for its full replacement value against loss or damage by theft, accident, fire and any other risks that are insured against by prudent persons engaged in a similar business to the Customer;

4.2 Manufacturer warranties

Any Hardware purchased by the Customer from Spirit is subject to the warranties (if any) given by the manufacturer in respect of the Hardware. Where ownership of any Hardware purchased by the Customer under an Order has passed to the Customer, Spirit will assign to the Customer the benefit of any warranties given to it by the manufacturer of the Hardware. To the full extent permitted by law, Spirit does not provide any warranties to the Customer in addition to these manufacturer warranties.

5. Customer's Obligations

5.1 General Obligations

The Customer must:

- (a) not use the Products:
 - (i) for any improper or unlawful purpose; or
 - (ii) in any way which damages or interferes with the network or infrastructure of Spirit or any of its Suppliers or with the supply of any service to any other customer of Spirit;
- (b) provide Spirit with all documentation, information and assistance reasonably required by Spirit to supply the Products;
- (c) provide Spirit with access to:
 - (i) the Customer's premises and the Customer's Users; and
 - (ii) any accounts used by the Customer (including login details and passwords), to the extent reasonably required by Spirit to supply the Products;
- (d) exercise all reasonable care and skill in performing its duties and obligations under this Agreement and in all matters act in good faith towards Spirit;
- (e) comply, and take reasonable steps to ensure that all of the Customer's Users comply, at all times with any reasonable directions given by Spirit from time to time in relation to the use of the Products;

- (f) comply with any operational procedures and technical specifications specified in any Product Schedule, user guide or otherwise provided by Spirit or its Supplier;
- (g) notify Spirit where there is a proposed Change of Control; and
- (h) not during the term of this Agreement and for 6 months thereafter solicit or endeavour to entice away any employee, agent, consultant or contractor of Spirit, or counsel, assist or procure any third Party to do so.

5.2 Provision of Information

The Customer agrees to provide Spirit with information relating to the Customer or its Business in connection with the supply of the Products, as reasonably required by Spirit from time to time. Information that may be required includes:

- (a) Customer Details;
- (b) information for credit management purposes;
- (c) information to assist Spirit or its Supplier in complying with its regulatory obligations; and
- (d) other information reasonably requested by Spirit relevant to the interests of maintaining the existing relationship between Spirit and the Customer.

5.3 Laws and Regulations

The Customer must:

- (a) comply with all laws, regulations, codes and standards applicable to the supply of the Products; and
- (b) provide any information, assistance and co-operation reasonably requested by Spirit to enable Spirit to comply with any laws, regulations, codes and standards applicable to the Products.

6. Financial Security

6.1 Creditworthiness

Spirit may review the creditworthiness of the Customer:

- (a) prior to the provisioning of Products, including if the Customer wishes to obtain additional Products from Spirit;
- (b) upon the expiry of the Minimum Term, and at least annually thereafter;
- (c) if an Insolvency Event occurs to the Customer;
- (d) if there is a Change of Control of the Customer;
- (e) if in Spirit's reasonable opinion there has been a material change in the Customer's financial position; or
- (f) if the Customer fails to comply with the payment terms of this Agreement.

6.2 Consent and Co-operation in Obtaining a Credit Report

- (a) The Customer consents to Spirit:
 - (i) providing and exchanging details of the Customer with a credit reporting agency including, without limitation, information about the Customer's creditworthiness, credit history, credit capacity and commercial activities; and
 - (ii) obtaining a Credit Report which contains personal information concerning the Customer from any credit reporting agency for the purpose of assessing the Customer's application to Spirit for commercial credit or the ongoing creditworthiness of the Customer or collecting payments that are overdue in respect of commercial credit provided to the Customer by Spirit.
- (b) The Customer agrees to co-operate with Spirit, in the preparation of a Credit Report and promptly provide all financial information and non-financial information reasonably requested for the purpose of preparing a Credit Report.

6.3 Obligation to Keep Spirit Informed

The Customer agrees to inform Spirit as soon as practicable in the event that:

- (a) there is a material adverse change in its creditworthiness, as would be ascertained by a Party acting reasonably; or
- (b) the Customer, for any reason, considers it is unable to meet and comply with the payment terms of this Agreement.

6.4 Security Deposit

- (a) Spirit may, where specified in the Order or by written notice, require the Customer to pay Spirit a Security Deposit of an amount up to two and a half (2.5) months' Charges payable by the Customer in any month of this Agreement.
- (b) The Customer must pay the Security Deposit to Spirit within five (5) Business Days of the Commencement Date or the date of written notice (as applicable). In addition to any other rights available to it under this Agreement, Spirit may suspend or terminate the supply of a Product if the Customer fails to pay the Security Deposit within the time required under this clause.
- (c) Spirit must hold the Security Deposit as security for the payment of any amounts due under this Agreement. If the Customer fails to pay any amount due on the due date for payment, Spirit may immediately deduct that amount from the Security Deposit in set-off of the Customer's payment obligation.
- (d) If Spirit deducts any monies from the Security Deposit under clause 6.4(c) the Customer must pay Spirit on demand by way of additional security that amount to replace the amount of the Security Deposit used in accordance with clause 6.4(c).
- (e) Spirit must return any part of the Security Deposit which is unused to the Customer on termination of this Agreement.

6.5 Directors' Guarantee

- (a) Spirit may, where specified in the Order or by written notice, require one or more directors of the Customer (each a **Guarantor**) to provide a guarantee to Spirit of the Customer's compliance with the Customer's duties and/or obligations arising under or in connection with this Agreement, including each obligation to pay money, and agree that:
 - (i) if the Customer in any respect fails to fully and properly perform any of its duties and/or obligations arising under or in connection with this Agreement; or
 - (ii) if the Customer commits any breach of any provision or fails to fulfil any warranty or discharge any indemnity set out in the Agreement,then the Guarantor will immediately upon Spirit's demand perform and fulfil in the place of the Customer each and every duty, obligation, provision, warranty or indemnity in respect of which the Customer has defaulted or as may be unfulfilled or not discharged by the Customer (**Directors' Guarantee**).
- (b) The Customer must provide the Directors' Guarantee to Spirit, in the form notified by Spirit, within ten (10) Business Days of the date requested. In addition to any other rights available to it under this Agreement, Spirit may terminate or suspend the supply of a Product if the Customer fails to provide the Directors' Guarantee within the time required under this clause.

7. Payment Terms and Fee Review

7.1 Invoice issued to the Customer

- (a) At the commencement of each calendar month, Spirit will issue an invoice to the Customer:
 - (i) in advance, for the Charges for the Products to be supplied in that calendar month; and
 - (ii) for Charges for the Products supplied to the Customer during the previous month or a previous month where the Products have not previously been charged, or if an incorrect fee had previously been rendered.
- (b) The Customer acknowledges that Spirit's records of Products supplied are prima facie evidence that the Products were supplied.
- (c) Where the amount of an invoice issued under clause 7.1 is less than the Minimum Commitment, the Customer will pay an amount (the **True Up Amount**) equal to the difference between: (i) the Minimum Commitment; and (ii) the Charges specified in the invoice issued under clause 7.1. Spirit will invoice the Customer for the True Up Amount.

7.2 Due Date

- (a) The Customer must pay Spirit the invoiced Charges, with the exception of any disputed amount notified in accordance with clause 7.3(a), within fourteen (14) days from invoice date (the **Payment Period**). The payment must be by electronic funds transfer to a bank account nominated by Spirit, in cleared funds, without set-off or deduction of any taxes, levies, imports, duties, charges (including intermediary bank charges), fees (including merchant fees) or withholdings of any nature.

- (b) If the Customer does not pay all of the invoiced Charges (other than any amounts disputed in accordance with clause 7.3) within the Payment Period, then without affecting any other rights under this Agreement, Spirit may:
 - (i) charge the Customer interest on the unpaid amount, from the due date until it is paid in full, at an annual rate equal to the Reserve Bank of Australia's official cash rate plus 3%; and
 - (ii) without liability suspend the supply of any Product, including directing any Third Party Provider to suspend any license, good or service until the Customer has paid Spirit the unpaid amount, including any interest due.

7.3 Invoice Dispute

- (a) If the Customer, in good faith, disputes all or part of an invoice, it must:
 - (i) notify Spirit within ten (10) Business Days of the date of the invoice setting out the reasons for its dispute and the specific amount in dispute; and
 - (ii) pay the undisputed amount of the invoice before the due date for payment.
- (b) The failure of the Customer to dispute an invoiced amount in accordance with clause 7.3(a) will constitute a waiver by the Customer of any objection to such amount.
- (c) Where the Customer disputes an invoiced amount in accordance with clause 7.3(a), Spirit will investigate the dispute and notify the Customer of the outcome of the investigation, and unless there is an obvious error, Spirit's decision regarding the dispute is final. If Spirit notifies the Customer that the disputed amount is payable, the Customer must pay that amount within ten (10) Business Days of receiving Spirit's notice of the outcome of its investigation.

7.4 Invoice Errors

Spirit may re-issue any invoice at any time if any error is later discovered.

7.5 Taxes

If any Taxes are payable by the Customer in connection with the Products supplied under this Agreement, the Charges otherwise to be paid is increased by the amount of the Taxes payable, and that amount must be paid in the same manner and at the same time as the payment for Products.

7.6 Fee Review

Spirit may, no more than annually on or after the anniversary of the Commencement Date, review and by written notice increase the Charges payable for Products supplied under this Agreement. Any increase for each Product may be for no more than the greater of 5% or CPI.

8. Confidential Information and Intellectual Property

8.1 Customer's Obligations

The Customer must:

- (a) keep Spirit's Confidential Information confidential;
- (b) use Spirit's Confidential Information only for the purposes of this Agreement; and
- (c) disclose Spirit's Confidential Information only to those of its employees or agents who have a need to know and who have agreed to keep it confidential.

8.2 Spirit's Obligations

Spirit must:

- (a) keep the Customer's Confidential Information confidential;
- (b) use the Customer's Confidential Information only as permitted by or for the purposes of this Agreement, to comply with obligations imposed on Spirit or its Related Bodies Corporate by law and to comply with directions and orders issued by a Regulator; and
- (c) disclose the Customer's Confidential Information only:
 - (i) to those of its employees, agents or Suppliers and those of its Related Bodies Corporate employees, agents or Suppliers, who have a need to know and who have agreed to keep it confidential; and
 - (ii) as required to facilitate use of the Customer's Confidential Information as permitted under clause 8.2(b) or as otherwise specified in this Agreement.

8.3 Permitted Disclosure

The obligations of confidentiality in clauses 8.1 and clause 8.2 do not apply to Confidential Information:

- (a) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence;
- (b) that is already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence; or
- (c) where such Confidential Information is disclosed in compliance with an applicable law or a court order, provided that, prior to disclosing any such Confidential Information, the party making the disclosure has, where practicable, given the other party reasonable advance notice of such law or order and an opportunity to preclude or limit such production. This clause 8.3(c) will not prevent Spirit from disclosing any information the disclosure of which is required by the Listing Rules of the Australian Securities Exchange, and Spirit will not be required to give the Customer advance notice of such disclosure or an opportunity to preclude or limit such production.

8.4 Intellectual Property Ownership and Use

The Customer will obtain no right, title or interest in or to the Intellectual Property. Where the Customer is permitted by Spirit (i.e. with its prior written consent) to use any part of the Intellectual Property, it must only use such Intellectual Property as follows:

- (a) the Customer must not make any copy of the Intellectual Property and must not alter the whole or any part thereof in any way, other than by the entry of data;
- (b) the Customer must not allow any other person to be in possession of a copy of the whole or any part of the Intellectual Property; and
- (c) The Customer must maintain accurate records as to the whereabouts of all copies of the whole or any part of the Intellectual Property provided to the Customer and to all persons who have access to it and must make such records available to Spirit at any reasonable time upon request.

9. Privacy

- (a) Each Party must comply with all Privacy Laws.
- (b) The Customer acknowledges that it has read and understood Spirit's Privacy Policy and agrees to be bound by its terms.
- (c) By providing the Customer's and Customer Users' Personal Information to Spirit, the Customer acknowledges and consents to the collection, use, storage and disclosure of the Customer's and the Customer's Users' Personal Information for:
 - (i) purposes relating to the supply of the Products to the Customer; and
 - (ii) otherwise in accordance with Spirit's Privacy Policy.
- (d) If Spirit, in providing the Products under this Agreement, uses or discloses the Customer's or the Customer Users' Personal Information, Spirit will:
 - (i) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (ii) not use Personal Information other than for the purposes directly related to providing the Products;
 - (i) not disclose Personal Information without the prior written consent of the Customer;
 - (ii) ensure that access to Personal Information is restricted to those persons who require access in order to perform their duties under this Agreement;
 - (iii) fully and promptly cooperate with any reasonable demands or inquiries made by the Customer or the Office of the Australian Information Commissioner (**OAIC**) in relation to handling of Personal Information by Spirit or breaches or suspected breaches (including data breaches) of the Privacy Law, including but not limited to such demands as are made to enable the Customer to respond to any applications or privacy complaints which require access to, or amendment of, a document containing a person's Personal Information;
 - (iv) take such steps as are necessary to reduce any potential harm to individuals caused by a suspected breach or eligible data breach or any other breach of the Privacy Law;
 - (v) comply with any reasonable direction of the Customer to give effect to any recommendations, requirements, rectification and preventative measures required by the Customer or the OAIC in connection with any acts or practices of Spirit that the Customer or the OAIC considers to be an actual or suspected breach of, or an eligible data breach under, the Privacy Law;

- (vi) ensure that the Customer's prior written consent is obtained prior to any communications being made or issued by Spirit to third Parties (including any affected individuals or the OAIC) in respect of any actual or suspected breach or eligible data breach of the Privacy Law; and
- (vii) if requested by the Customer, promptly return or destroy any record, document or file which contains Personal Information in accordance with the Customer's instructions upon expiry or termination of this Agreement.

10. Security

10.1 Physical Security and Access

When involved in the provision of Products that include access to the Customer's premises, facilities or other resources belonging to the Customer, Spirit will comply with the Customer's reasonable rules, directions and procedures, including those relating to security or workplace health and safety and data security.

10.2 Data Security

When involved in the provision of Products that include the management, maintenance, storage and transfer of Customer Data, Spirit agrees that it will:

- (a) will do all things reasonably necessary to ensure the Customer Data is secure;
- (b) notify the Customer if there has been a breach of data security and will do all things reasonably necessary to remedy the breach; and
- (c) keep and maintain records of all Products provided in accordance with good professional practice.

11. Maintenance and Suspension

11.1 Maintenance

Spirit or its Suppliers may perform scheduled and unscheduled maintenance or perform updates in relation to the Products from time to time. Spirit will use reasonable efforts to give the Customer notice before undertaking any scheduled maintenance and to perform all scheduled maintenance at times likely to minimise interference to the Customer.

11.2 Suspension

Spirit may, without liability, immediately suspend performance of any or all of its obligations (including the supply of Products) under this Agreement if:

- (a) Spirit, acting reasonably, considers necessary to comply with any law or to protect the health and safety of any person;
- (b) the Customer defaults in the performance of any of its obligations under this Agreement and that default is not remedied within ten (10) Business Days;
- (c) the Customer is affected by an Insolvency Event; or
- (d) an Agreement with its Supplier(s) is suspended for any reason.

11.3 Other remedies

Any suspension under clause 11.2 or a Product Schedule does not prevent termination of this Agreement (as per clause 14) during the period of suspension and does not affect any other remedy of Spirit.

12. Termination

12.1 Termination by Customer for Convenience during Minimum Term

During the Minimum Term and subject to its obligations under clause 13.1, the Customer may terminate the Agreement for convenience, by giving at least thirty (30) days' written notice to Spirit.

12.2 Termination by Either Party following Minimum Term or if no Minimum Term applies

Following expiry of the Minimum Term, or if no Minimum Term applies, either Party may terminate this Agreement, by giving at least thirty (30) days' written notice to the other Party, or as otherwise agreed between the Parties.

12.3 Termination by Spirit for Cause

Spirit may terminate this Agreement with immediate effect if:

- (a) the Customer breaches a Material Term of this Agreement and fails to remedy that breach within ten (10) Business Days after receiving notice from Spirit requiring it to do so;

- (b) the Customer breaches any other provision of this Agreement that is capable of being remedied and fails to remedy that breach within twenty (20) days after receiving notice from Spirit requiring it to do so;
- (c) there is a Change of Control of the Customer;
- (d) any event referred to in clause 12.5 (Insolvency Events) occurs; or
- (e) an agreement with its Supplier(s) terminates for any reason.

12.4 Termination by Customer for Cause

The Customer may terminate this Agreement at any time with immediate effect by giving notice to Spirit, if Spirit breaches a Material Term of this Agreement and fails to remedy that breach within ten (10) Business Days after receiving notice from the Customer requiring it to do so.

12.5 Insolvency Events

The Customer must notify Spirit in writing immediately if:

- (a) the Customer considers that there is a reasonable risk that it may cease to carry on business or its Business;
- (b) any step is taken to enter into any scheme or arrangement between the Customer and its creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business or the Business; or
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Customer's assets or business.

12.6 Accrued Rights

Termination of this Agreement will not affect the accrued rights or remedies of either party.

12.7 Termination Rights in Addition to other Rights

The rights of Spirit set out in this clause are in addition to and not in derogation of any right, power or entitlement of Spirit under any statute or regulation or otherwise at law or in equity.

13. Consequences of Termination

13.1 Customer's Obligations on Termination

On termination of this Agreement the Customer must immediately:

- (a) if the Agreement is terminated by the Customer under clause 12.1 or by Spirit under clause 12.3, pay Spirit the Termination Fee. The Customer acknowledges and accepts that the Termination Fee is a genuine and reasonable pre-estimate of the loss resulting to Spirit from the termination of the Agreement;
- (b) settle all monies owed between both parties; and
- (c) return to Spirit all of Spirit's Confidential Information, Intellectual Property and other material and all copies thereof.

13.2 Non-compliance

If the Customer has not complied with clause 13.1(c) within five (5) Business Days of the date of termination, the Customer must allow Spirit (or any representative nominated by Spirit) to enter any premises owned or occupied by the Customer to remove that material.

14. Indemnity

Subject to the limitations of liability set out in clause 15, the Customer indemnifies Spirit and its Related Bodies Corporate and its Suppliers against all losses, damages, expenses and costs (including reasonable legal costs) to the extent arising from as a result of:

- (a) any breach by the Customer of this Agreement of any Products provided under the Agreement; or
- (b) any grossly negligent act or omission of the Customer or any of its officers, employees, agents, contractors or representatives relating to this Agreement of any Products provided under the Agreement;

provided that such indemnity is reduced proportionally to the extent that Spirit caused or contributed to the losses, expenses, damages, expenses or costs.

15. Liability

15.1 No implied terms

- (a) Spirit does not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010 (Cth)*) where to do so would:
 - (i) contravene that statute; or
 - (ii) cause any part of this clause to be void.
- (b) Except to the extent clause 15.1(a) applies, Spirit excludes all:
 - (i) statutory liability;
 - (ii) tortious liability (except to the extent that loss or damage is a consequence of Spirit's gross negligence in which event the aggregate amount claimed must not exceed the value of the Products provided relating to that loss or damage); and
 - (iii) conditions, warranties or guarantees implied by custom, the general law or statute, arising out of, or relating to the Products, any failure to supply or delay in supplying the Products or this Agreement.
- (c) Where legislation implies into this Agreement any condition, warranty or guarantee that cannot be excluded, then to the extent permitted by law, Spirit's liability for any breach of such condition, warranty or guarantee is limited, at Spirit's option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again (except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption).

15.2 No Consequential Loss

Neither party is liable to the other party for any Consequential Loss, however caused, in connection with or related to this Agreement or in respect of the Products.

15.3 Limitation of liability

- (a) Subject to clause 15.3(b), the total aggregate of each Party arising under or in connection with this Agreement is limited to the Charges paid by the Customer to Spirit in the 12-month period prior to the date of the relevant claim.
- (b) The limitation of liability in clause 15.3(a) does not apply to any liability for:
 - (i) any payment due under this Agreement;
 - (ii) any personal injury or death in relation to the supply of the Products;
 - (iii) any damage to the Customer's property resulting from the supply of the Products, but Spirit limits its liability to its choice of repairing or replacing the property or paying the cost of repairing or replacing it; or
 - (iv) any breach of clause 5.1(a) (Customer Obligations) or clause 8 (Confidential Property and Intellectual Property).

16. Force Majeure

- (a) Neither Party will be liable for any failure or delay in complying with any term of this Agreement if such failure or delay directly or indirectly results from an event outside that Party's reasonable control (**Force Majeure Event**), including but not limited to, fire, storm, flood, earthquake, pandemic (including, without limitation, the COVID-19 pandemic), accident, war, labour dispute, materials or labour shortage other than its own staff or staff under its control, law or regulation or act or omission of any third person (including, without limitation, a carrier). Despite the foregoing, payment of money is never excused.
- (b) The Party unable to perform its obligations must:
 - (i) notify the other Party promptly, providing reasonable details of the Force Majeure Event and, so far as is known, the probable extent to which the affected Party will be unable to perform or be delayed in performing its obligation; and
 - (ii) use its best efforts to resume performance in accordance with this Agreement as soon as possible.
- (c) If any Force Majeure Event continues for more than six (6) months then this Agreement may be terminated immediately by either Party giving notice to the other Party.

17. Insurance

Spirit will maintain the following insurance for the duration of this Agreement:

- (a) professional indemnity for \$10 million per occurrence and in the aggregate;
- (b) product and public liability \$20 million per occurrence and in the aggregate; and
- (c) workers' compensation insurance as required by law in respect of all employees and, where relevant, sub-contractors.

18. Disputes

- (a) Before resorting to external dispute resolution mechanisms the Parties agree to attempt to resolve any dispute in relation to this Agreement (other than a dispute in relation to payment of Spirit invoices, which shall be dealt with in accordance with clause 7.3 (Disputed Invoices)) by the processes in this clause.
- (b) The aggrieved Party will notify the dispute by giving written notice to the other Party (**Dispute Notice**). The Parties must use their best endeavours to resolve the dispute by negotiation between a senior manager of each Party.
- (c) If the senior managers of each Party do not resolve the dispute within twenty (20) Business Days, either party may take such additional action as it deems necessary to resolve the dispute, including initiating proceedings.
- (d) Nothing in this clause prevents a Party seeking urgent interlocutory relief from a Court at any time.

19. General

19.1 Related Bodies Corporate

Spirit may perform any of its obligations under this Agreement by arranging for them to be performed by any of its Related Bodies Corporate.

19.2 Assignment

The Customer must not assign, novate or otherwise transfer any right or obligation under this Agreement without Spirit's written consent, which must not to be unreasonably withheld or delayed. Spirit may assign, novate or transfer all or any of its rights and obligations under this Agreement to any of its Related Bodies Corporate, but not otherwise without the written consent of the Customer, which must not to be unreasonably withheld or delayed.

19.3 Independent contractors

The Parties agrees that they are independent contractors and that this Agreement does not constitute in any form a partnership, joint venture, franchise, agency or employment relationship.

19.4 Due Diligence

The Customer acknowledges to Spirit that it has had ample opportunity to conduct all due diligence activities which it required before entering into this Agreement (including obtaining, or having the opportunity to obtain, legal advice), and that it has entered into this Agreement based on its own investigations and has not relied on representations or warranties made by Spirit.

19.5 Entire Agreement and Variations

This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes all prior representations, understandings, arrangements or agreements in connection with that subject matter. Except as otherwise provided in this Agreement, may only be amended in writing signed by the duly authorised officers of each Party.

19.6 Severability

Any part of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

19.7 Waiver

The failure of either Party at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

19.8 Notices

A notice under this Agreement must be in writing and hand delivered, sent by pre-paid post to the address of the recipient, or sent by email, to the address or email set out in the Order. A notice given will

be deemed received: (i) if hand delivered, on the date of delivery; (ii) if sent by pre-paid post, three (3) days after the date of posting; and (iii) if sent by email, on the date sent, unless the recipient is able to demonstrate that the email failed to deliver.

19.9 Survival

Any provisions of this Agreement that require or contemplate performance or application after termination are enforceable against the other Party and its successors and assignees: clause 7 (**Payment Terms and Fee Review**), clause 8 (**Confidential Information and Intellectual Property**); clause 9 (**Privacy**); clause 10 (**Security**), clause 13 (**Consequences of Termination**); clause 14 (**Indemnity**); clause 15 (**Liability**); and clause 18 (**Disputes**).

19.10 Governing Law

This Agreement is governed by the laws applicable in the State of Victoria and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.

20. Definitions

In this Agreement:

Agreement means any Orders, the General Terms, any applicable Product Schedule, the Service Levels, and any other documents incorporated into the Agreement.

Business means the Customer's business.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Melbourne, Victoria.

Change of Control means, in relation to the Customer, a change in any of the following:

- (a) control of the composition of the board of directors of the corporation;
- (b) control of more than one half of the voting rights attaching to shares in the corporation; or
- (c) control or more than one half of the issued share capital of the corporation, excluding any part of the issued share capital which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

except where that change is as a result of trading of securities on any securities exchange reconstruction, amalgamation, merger or consolidation.

Charge means a fee for a Spirit Product, as specified in an Order or as varied in accordance with this Agreement.

Commencement Date means the date of commencement of this Agreement specified in the Order.

Confidential Information of a Party means all information treated by that Party or any of its Related Bodies Corporate as confidential (regardless of its form and whether the other Parties becomes aware of it before or after the date of this Agreement). Spirit's Confidential Information includes the terms of this Agreement and the Charges. The Customer's Confidential Information includes the Customer's Personal Information.

Consequential Loss means:

- (a) loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss, loss or corruption of data, loss arising from any unauthorised or illegal access by any person to any part of the system providing the Products (including cyber attack, hacking, cracking, virus dissemination and denial of service attacks), loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any increased operating costs suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute, any other form of consequential, special, indirect, punitive or exemplary loss or damages and any third Party loss; and
- (b) any penalties or fines imposed by a Regulator.

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

CPI means the Consumer Price Index, Australia published by the Australian Bureau of Statistics for the 12 month period prior to the relevant variation of the Charges.

Credit Report means a report including financial and non-financial information about the Customer, summarising the creditworthiness, credit standing, credit history and/or credit capacity of the Customer.

Critical Information Summary means a document described as a Critical Information Summary on Spirit's website, as amended from time to time.

Customer means the customer specified in the Order.

Customer Data means the Customer's information, data or other electronic materials.

Customer's Users means any officer, employee, agent, contractor or representative of the Customer that use, or request to use, the Products.

General Terms means the terms set out in the 'General Terms' section of this Agreement.

GST means a goods and services tax, or a similar value added tax, levied or imposed under the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999* or the relevant jurisdiction.

Insolvency Event has the meaning given in clause 12.5.

Intellectual Property means proprietary information and property owned by Spirit or its Related Bodies Corporate including copyright, trademarks, patents and other intellectual property rights including copyright in software used to provide the Products and any publications and literature of Spirit.

Material Term means a term of this Agreement relating to clause 3 (**Products**), clause 4 (**Hardware**), clause 5 (**Customer's Obligations**), clause 6 (**Financial Security**), clause 7 (**Payment Terms and Fee Review**) and clause 8 (**Confidential Information and Intellectual Property**), clause 9 (**Privacy**), clause 10 (**Security**) and clause 18 (**Disputes**).

Minimum Commitment means a commitment by the Customer to pay Spirit a minimum amount each month (or such other period specified), as specified in the Order.

Minimum Term means the minimum term of this Agreement (also described as 'Contract Term') as specified in the Order (if any).

Order means an order by the Customer for one or more Product, in such form as provided by Spirit from time to time (including in a Proposal signed by the Customer).

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Privacy Laws means any laws, regulations, codes or policies applicable to protecting the privacy of individuals and their personal information, including Part 13 of the *Telecommunications Act 1997* (Cth), the *Privacy Act 1988* (Cth).

Privacy Policy means Spirit's privacy policy available on Spirit's website, as amended from time to time.

Product means a product or service offered by Spirit.

Product Schedule means a schedule (including any document described as a Critical Information Summary or a Service Schedule) containing additional terms and conditions applicable to the particular Product, as notified or provided to the Customer by Spirit or available on Spirit's website, as amended from time to time.

Proposal means a proposal by Spirit to supply one or more Products.

RCTI means a Recipient Created tax Invoice as defined in the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999*.

Regulator means the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Communications Alliance Ltd, the Australian Competition and Consumer Commission and any authority or agency which has lawful authority over any of the subject matter of this Agreement.

Related Bodies Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

Service Level Credit means any credit applied by Spirit to the Customer's Charges for a Product, which is calculated as set out in a relevant Product Schedule or as notified or provided to the Customer or available on Spirit's website, as amended by Spirit from time to time.

Service Levels means the service levels relating to the supply of a Product, as set out in a relevant Product Schedule or as notified or provided to the Customer or available on Spirit's website, as amended by Spirit from time to time.

Software means software consisting of machine readable instructions, its components, data and audio visual content (such as images, text, recordings or pictures) and related licensed materials including all whole or partial copies, which is owned or licensed by Spirit or one of its Related Bodies Corporate.

Spirit means Spirit Telecom (Australia) Pty Ltd ABN 99 112 320 804 of Level 2, 19-25 Raglan Street, South Melbourne VIC 3205.

Supplier means Spirit's supplier of a Product.

Taxes means a tax, import tax, charge or custom imposed or collected by any taxing authority or agency, gross receipts tax, levy, duty, deduction or withholding, however it is described, that is imposed by law or

by a government agency, including any tax (such as GST) that the Party is required by law to collect, together with any related interest, penalty, fine or other charge.

Term means the term of this Agreement, as set out in clause 2.

Termination Fee means an amount payable by the Customer to Spirit based on the elapsed time from the commencement of the Agreement, which is calculated as: Total contracted services value of the Agreement during the Minimum Term, less any paid one-off upfront Charges, divided by the total number of months in the Minimum Term, then multiplied by the number of months remaining in the Minimum Term multiplied by 75%.

$$\begin{array}{rcl}
 \text{Example:} & \text{Termination Fee} & = \frac{(\text{Total contracted value of Agreement during the Minimum Term} - \text{Paid one-off upfront Charges})}{\text{Number of months in the Minimum Term}} \times \text{No. of months remaining in Minimum Term} \times 75\%
 \end{array}$$

Third Party Provider means any third party who, at Spirit's direction, supplies a license, good or service to the Customer.