



CIRRO

Terms & Conditions of Service





1. Introduction

Some of the terms and conditions in this G-Cloud document will be superseded by Crown Commercial Services Terms or modified to better reflect the services and requirements of the Customer, following our standard Terms & Conditions, these will vary depending on the scope of works and specific solutions. Crown Commercial Services Terms and any Statements of Works, Works Order or Proposal have priority over the Terms & Conditions in this document.

2. Definitions

“Acceptable-Use Policy” means the then-current version of the Cirro Acceptable-Use Policy that appears on the Cirro website;

“Additional Terms” means the terms applicable to each Service or incorporated into a Purchase Order;

“Agreement” means this Master Services Agreement and all Schedules executed by the parties;

“The Customer-Supplied Software” means any software, other than Cirro-Supplied Software, required to perform the Services. The Customer-Supplied Software includes Third-Party Software.

“Deliverables” means documents or other materials created by Cirro and required to be delivered to the Customer pursuant to a Schedule. “Deliverables” does not include Software.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Hardware” means servers, telecommunications and other equipment that are listed in a Schedule, if applicable, and that are to be supplied either by Cirro (“Cirro-Supplied Hardware”) or the Customer (“Customer-Supplied Hardware”) for the purpose of rendering the Services.

“Cirro-Supplied Software” means software provided by Cirro as listed in a Schedule and that may be accessed by the Customer solely in connection with the use of the Services. Cirro-Supplied Software is not licensed to the Customer.

“Insolvency Event” the occurrence of any of the following events in relation to the party concerned:

- a. a resolution for its winding up being passed or a court of competent jurisdiction making an order for it to be wound up or dissolved or it being otherwise dissolved;
- b. it being subject to the appointment of an administrator or the making of an administration order or the appointment of a receiver or administrative receiver or an encumbrancer taking possession of or selling, the whole or part of its undertaking, assets, rights or revenue;



- c. it entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- d. it being unable to pay its debts or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- e. it being subject to any event analogous to any para (a) to (d) above (inclusive) in a jurisdiction other than England and Wales;

save that a resolution by the relevant party or a court order that such party be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event and a compromise or composition with creditors agreed whilst the relevant party is continuing to trade shall not amount to an Insolvency Event.

“Professional Services” means Services provided to the Customer pursuant to a professional-services Services Schedule.

“Purchase Order” means an order form for specific Services which has been signed and accepted by both Parties (together with any change orders or renewal orders signed and accepted by both Parties);

“Requirement of Law” means all national, state and local laws, rules and regulations, and all orders, judgments, decrees or other determinations of any Governmental Authority or arbitrator that are applicable to, or binding upon, the Customer or Cirro, as indicated herein, or any of its property.

“Sales Order” means a document executed by the parties identifying the Services agreed upon by the parties to be provided by Cirro to the Customer under this Agreement, the pricing for such Services and the term during which the Services are to be provided.

“Schedule” means any or all, as applicable, of the following: Services Schedule, SOW and Sales Order, including any amendments to the foregoing.

“Services” means the services (including all associated Cirro-Supplied Software and Cirro-Supplied Hardware) purchased by the Customer as described in a Schedule.

“Services Schedule” means a document executed by the parties that identifies: (a) Service-specific terms and conditions and (b) Cirro’s and the Customer’s responsibilities with respect to such Services.

“SLA” means a service-level agreement attached to a Services Schedule, if applicable.

“Software” means Cirro-Supplied Software and the Customer-Supplied Software, including, without limitation, software applications, database software, operating-system software and/or remote access software.



“Statement of Work” or **“SOW”** means a statement of work describing the Services. The parties can execute a SOW to add Services to a Schedule and such SOW shall become an exhibit to the applicable Schedule.

“Third-Party Software” means any Software that is owned by a third party and licensed by the Customer either from a third-party vendor or through Cirro pursuant to a separate agreement or Schedule, as applicable, and excludes Cirro-Supplied Software.

“VAT” means the value added tax imposed by EU Council Directive 2006/112/EC and any national legislation implementing that directive or its predecessor directives.

3. Services

3.1. Scope

Cirro will perform the Services, deliver the Deliverables, and/or distribute, license or sublicense the Third-Party Software acquired through Cirro, as specified in a Schedule.

3.2. Access to Facilities and Information

The Customer will provide Cirro with reasonable access to hardware, equipment, tools, supplies, software, utilities, information and facilities of the Customer that, in each case, Cirro reasonably determines necessary to enable it to perform any Services. The Customer agrees to cooperate with Cirro and respond in a timely manner to all reasonable requests for access to the Customer's Service environment and/or information to facilitate Cirro's delivery of Services. Cirro is not responsible or liable for any delays or non-performance based on the Customer's failure to comply with this Section 3.2.

4. Payment

4.1. Invoicing and Payment

Cirro shall invoice the Customer for all fees due as described in a Schedule and in the Agreement. All initial set-up and other one-time fees will be invoiced prior to execution of the applicable Schedule. All recurring fees for Services will be invoiced one month in advance beginning on Acceptance of the applicable Services. Usage-based charges shall be invoiced monthly in arrears. Invoices may be provided to the Customer by e-mail. The Customer shall pay all invoices in full in pounds sterling within 30 days of the applicable invoice date; provided that the Customer may withhold payment for any portion of any invoice which is reasonably disputed in writing (setting forth the reasons for such dispute) within a 10 day period from receipt of the invoice. The parties shall cooperate to promptly resolve any such dispute. Cirro reserves the right to invoice for a portion or all of the Customer's Services that are installed if the Customer fails to (a) cooperate by not providing any necessary assistance to allow Cirro to complete implementation, or (b) complete



Acceptance in good faith. Except with respect to metered services (e.g., telephone voice minutes, bandwidth, backups, professional services or additional service elements), all fees owed under this Agreement shall be prorated if the first billing date is after the first day of the month.

4.2. Late Payments; Remedies

The parties agree that no check or other payment method with 'payment in full' or 'in full satisfaction' inscribed shall constitute an accord and satisfaction. The Customer shall reimburse Cirro for all fees and costs (including legal fees) incurred by Cirro in connection with collecting any overdue amounts. Cirro may, upon 10 days' prior written notice, suspend Services for any payment past due.

4.3. Acceptance

Cirro shall inform the Customer in writing (including, without limitation, by e-mail) when the Customer's Services have been implemented and are ready for use ("Completion Notice"). The Customer shall have a period of 10 days from the date of such Completion Notice to test the Services and confirm whether the Services conform to the specifications set forth in a Schedule. The Customer shall either accept such Services or notify Cirro in writing of any non-conformance within such 10 day period, setting forth the reasons for such non-conformance. Cirro shall use commercially reasonable efforts to remedy any identified non-conformance and shall provide the Customer a second Completion Notice when the Services are again ready for use. The foregoing process shall continue until the Services are accepted. Notwithstanding the foregoing, the Services shall be deemed accepted by the Customer on the date of the Completion Notice in the event that either: (a) the Customer fails to notify Cirro of any non-conformance within such 10 day period or (b) the Customer uses any of the Services (e.g., space, power and bandwidth) for other than acceptance testing as permitted herein. The date of acceptance (or deemed acceptance) shall be referred to as the "Fully Implemented Date" or "Acceptance".

4.4. Taxes

The Customer shall (a) reasonably assist Cirro upon request with identifying locations of end-users or the general usage of Services so that Cirro may reasonably rely upon and calculate potential taxes for Services delivered and (b) promptly pay Cirro for any taxes and duties related to the Services that are required to be collected or paid by Cirro (including any VAT chargeable in relation to the Services); provided that the Customer shall not be responsible for any taxes on Cirro's net income.

4.5. Credit Check; Security Payment

Delivery of Services is subject to the Customer satisfying Cirro's credit approval process. Cirro reserves the right to obtain a security payment in the amount of one-month's minimum monthly recurring fees at the commencement of Services. Cirro shall not be obligated to segregate or to pay



any interest on any portion of the security payment. Upon termination of this Agreement without renewal, any remaining portion of the security payment will, at Cirro's option, either be returned to the Customer or applied to the Customer's final invoice to the extent that, in each case, the security payment has not previously been applied to the Customer's account as a result of any breach of this Agreement by the Customer.

5. Cirro Proprietary Rights

5.1. Cirro Proprietary Rights; the Customer License

All materials including, but not limited to, any hardware (including related firmware), software, data and information provided by Cirro, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by Cirro to provide the Services, whether developed alone or jointly with others, (collectively "Cirro Materials") shall remain the sole and exclusive property of Cirro or its suppliers. Nothing herein is intended to, or shall, convey any right or ownership interest to the Customer or any other person or entity in or to such Cirro Materials. Upon payment of the fees for the Services, Cirro grants the Customer a non-exclusive, perpetual, fully-paid license to use, only in the ordinary course of the Customer's internal business, Cirro Materials that are incorporated into, or embodied within, a Deliverable, provided that the Customer is in compliance with this Agreement.

5.2. Trademark Rights

During the term of this Agreement, the Customer grants Cirro the right: (a) to include the Customer's logo and name on Cirro's website and in other marketing material to identify the Customer as a the Customer of the Cirro Services and as otherwise necessary in connection with the Customer's use of Cirro Services, and (b) to issue a press release announcing the relationship established by the Customer and Cirro hereunder and identifying the general type of Services purchased by the Customer. The Customer shall have the right to require Cirro to terminate the use described in this Section 5.2 at any time by written notice.

6. The Customer Data and Confidential Information

6.1. Customer Data

All Customer information and data stored by the Customer on Cirro systems pursuant to this Agreement ("the Customer Data") shall be the Customer's exclusive property and Confidential Information.

The Customer is solely responsible for the adequacy and accuracy of Customer Data. Cirro may access such Customer Data solely for the purpose of delivering the Services. Where applicable as



expressly set forth in a Schedule, Cirro shall perform a data export and provide the Customer with a copy of Customer Data at the Customer's expense upon the Customer's request.

6.2. Customer Obligations and Responsibilities: Protected Data

Notwithstanding anything to the contrary, the Customer acknowledges that Cirro provides specific additional services and information technology architecture solutions that the Customer is required to purchase prior to the Customer's transmission via the Services of any personal data, credit card information or health information which is afforded protection under any Requirements of Law ("Protected Data"). The placing by the Customer of Protected Data in the Cirro environment without the purchase of such specific additional services and solutions, or without prior notice to and written agreement by Cirro, is a material breach of this Agreement. The Customer or its authorised third party is solely responsible for any approval, certification or audit for compliance with any Requirements of Law for Protected Data and the same shall not be undertaken in reliance of any Services provided by Cirro. Where the Customer purchases such specific additional services and solutions, Cirro shall take appropriate technical and organisational measures against unauthorised or unlawful processing of any personal data of the Customer which Cirro processes on the Customer's behalf and against accidental loss or destruction of, or damage to, such personal data. (In this Section 6.2, the terms "personal data" and "processing" shall have the meanings given to them in the General Data Protection Regulation (GDPR).)

6.3. Confidential Information

"Confidential Information" means any information and data, including in tangible, electronic or other form, of Cirro or the Customer that is identified as confidential or proprietary at the time of disclosure or that should be understood to be confidential by the nature of the information or the circumstances of the disclosure. Confidential Information shall include, without limitation, Services, products, product configurations, business plans, strategies, technology, software, documentation, methodologies, know-how, technical information, pricing, pricing mechanisms, financial information, and information regarding each party's operations, business relationships and the terms of this Agreement. In addition, the Customer Data is considered the Confidential Information of the Customer.

Confidential Information shall not include any information that (a) is known to the receiving party prior to receipt hereunder from a source other than one having an obligation of confidentiality to the disclosing party, (b) becomes lawfully known (independently of disclosure by the disclosing party) to the receiving party from a source other than one having an obligation of confidentiality to the disclosing party, (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement, or (d) is independently developed by the receiving party without use of the Confidential Information. The receiving party agrees that it will not use the Confidential Information of the disclosing party in any way, for its own account or the account of any third party, except for the purpose of performing this Agreement, nor will the receiving party disclose



the Confidential Information of the disclosing party to any third party except as required by law. The receiving party will take reasonable precautions to protect the confidentiality of such Confidential Information. If either party is required by law (including by subpoena, judicial or administrative order or otherwise) to make any disclosure of any of the other party's Confidential Information, such party must first give written notice of such requirement to the other party, unless prohibited by law, to permit such other party to intervene in any relevant proceedings to protect its interests in the Confidential Information and provide full cooperation and assistance in seeking to obtain such protection, at the disclosing party's cost and expense.

Notwithstanding the foregoing, the Customer and Cirro agree that each party may need to disclose certain of the other party's Confidential Information to third parties with a need to know in performance of the Agreement such as, auditors, partners, sub-contractors, equipment manufacturers, resellers, advisors and consultants ("Necessary Third Parties"); provided, however, each party will ensure that any of its Necessary Third Parties are bound by a non-disclosure agreement consistent with the non-disclosure obligations herein before receiving any such Confidential Information, unless by the very nature of the relationship there is an obligation of confidentiality (e.g., attorneys). In addition, Cirro and the Customer each agree to be liable for breaches of the terms of this Section 6 by its Necessary Third Parties.

7. Warranties, Disclaimers and Limitation of Remedies

7.1. By the Customer

The Customer represents and warrants to Cirro that: (a) the Customer will use the Services in compliance with all Requirements of Law and in accordance with this Agreement and the Acceptable-Use Policy, and (b) the Customer has the right and authority and any and all necessary third-party authorisations and consents to provide Cirro with the Customer-Supplied Software, the Customer-Supplied Hardware, the Customer Data and other materials supplied by the Customer hereunder.

7.2. By Cirro

Cirro represents and warrants to the Customer that: (a) Cirro will comply with all Requirements of Law of the United Kingdom applicable to it in delivering the Services, (b) Cirro has the right and authority to use and provide the Customer with access to the Cirro-Supplied Software in rendering the Services hereunder and (c) Cirro will use qualified personnel to provide the Services to the Customer.

7.3. Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CIRRO DOES NOT MAKE, AND CIRRO EXPRESSLY DISCLAIMS, ALL WARRANTIES, REPRESENTATIONS AND TERMS EXPRESS OR IMPLIED RELATING TO THE SERVICES (INCLUDING THE CIRRO-SUPPLIED SOFTWARE AND



CIRRO-SUPPLIED HARDWARE) AND OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES, REPRESENTATIONS OR TERMS OF MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, SECURITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CIRRO DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, TERMS AND INDEMNITIES WITH REGARD TO THIRD-PARTY MAINTENANCE SERVICES OR THE FLOW AND SECURITY OF THE CUSTOMER DATA OVER THE INTERNET. THE CUSTOMER IS SOLELY RESPONSIBLE FOR, AND CIRRO EXPRESSLY DISCLAIMS, ALL REPRESENTATIONS, WARRANTIES, TERMS AND LIABILITIES OF ANY KIND RELATING TO THE CUSTOMER-SUPPLIED SOFTWARE AND THE CUSTOMER-SUPPLIED HARDWARE. IF THE CUSTOMER ACQUIRES THIRD- PARTY SOFTWARE THROUGH CIRRO, ANY REPRESENTATIONS, WARRANTIES AND/OR TERMS APPLICABLE TO SUCH SOFTWARE SHALL BE INCLUDED IN A CLICK-WRAP, SHRINK-WRAP OR SIMILAR TYPE OF LICENSE AGREEMENT INCLUDED WITH THE THIRD-PARTY SOFTWARE OR SET FORTH IN A SOFTWARE SCHEDULE.

7.4. Limitation of Remedies.

If Cirro breaches this Agreement, as the Customer's sole and exclusive remedy, and Cirro's sole and exclusive liability: (a) Cirro, upon receipt of written notice from the Customer specifying the nature of the breach in reasonable detail, shall work diligently to cure the breach at Cirro's expense, (b) the Customer shall have the service-credit remedies (if applicable) specified in the applicable SLA so long as the Customer is in good standing with no past due amount owed to Cirro under this Agreement, (c) the Customer shall have the indemnification remedies (if applicable) specified in this Agreement, and (d) the Customer shall have the termination rights (if applicable) specified in Section 8.4 of this MSA.

8. Termination

8.1. Renewal

Unless agreed to otherwise in writing, all Schedules shall automatically renew for successive terms (each a "Renewal Term") equal in length to the then-current term (i.e., the initial term, the Renewal Term or any other extension term set forth on such Schedule) unless either party provides notice of termination of such Schedule to the other party 90 days prior to the last day of the then-current term.

8.2. Quarter-to-Quarter Term

If, upon the end of the Customer's then current term, the Customer requests (and if Cirro agrees to provide) a quarter-to-quarter term then the monthly recurring fees for all such quarter-to-quarter Services shall automatically increase by 25% over the fees immediately prior to such quarter-to-quarter term and the payment terms shall be 15 days (rather than 30 days) in advance of each month.



8.3. Termination for Uncured Material Breach

Either party may terminate a particular Schedule or this Agreement (including all Schedules) by written notice to the other party: (a) if the other party breaches or fails to observe or perform any material term of such Schedule or this Agreement and does not cure such breach or failure within 30 days after written demand (five days in the case of late payment of fees) by the non-breaching party specifying the nature of the breach in reasonable detail and stating such party's intention to terminate; provided however, that such written demand must be sent within 30 days of the event or such right to terminate shall be deemed waived, unless such breach is continuing; (b) an Insolvency Event occurs in relation to the other party or (c) otherwise as expressly provided in the Agreement. The failure to pay amounts owed under a Schedule when due shall be considered a breach of a material term.

8.4. Effect of Termination

Upon termination of this Agreement or a Schedule, all rights and obligations of the parties under such terminated Agreement or Schedule shall cease, except for those rights and obligations that, by the terms of this Agreement or the applicable Schedule or the nature of the right or obligation, survive termination. Upon termination of this Agreement: (a) the Customer must cease using, and Cirro will cease providing, any terminated Services, (b) each party will return to the other party any Confidential Information of the other as specified in Section 5.1, (c) each party will make available to the other party any Hardware, Software or other property of such other party in its possession as specified in Section 5.1, provided that the Customer may not access the Customer-Supplied Hardware in Cirro's facilities until the Customer has fully satisfied its payment obligations to Cirro, and provided further that Cirro shall store the Customer-Supplied Hardware in Cirro's secured facilities and at the Customer's sole expense until the date that is the earlier of (i) 60 days after the effective termination date, after which Cirro may (A) sell or otherwise dispose of such the Customer-Supplied Hardware in a manner it deems appropriate and (B) keep any proceeds resulting therefrom, and (ii) 15 days after the date on which the Customer has fully satisfied its payment obligations to Cirro, and provided further that each party shall release and hold the other party harmless from and against any liability for damage of any kind whatsoever that may be caused by such party's equipment during such migration, (d) Cirro shall remove copies of the Customer Data from Cirro's systems and property in accordance with the terms of the Agreement and Cirro's standard backup and recycling program, and (e) Cirro shall provide, at the Customer's expense, reasonable termination/expiration assistance requested by the Customer to facilitate the orderly transfer of Services and migration of the Customer Data and the Customer-Supplied Software to the Customer or another third- party provider, for a period not to exceed 30 calendar days, unless otherwise set forth in a separate Schedule executed by the parties.

Within 10 days after the effective date of any termination of this Agreement or a Schedule, the Customer shall pay Cirro all amounts owed under the terminated Schedules through such effective date of termination. In addition, and notwithstanding anything to the contrary in this Agreement, if the Customer terminates a Schedule or this Agreement other than as expressly permitted



hereunder, or if Cirro terminates a Schedule or this Agreement as a result of an uncured material breach by the Customer, then, as just and reasonable compensation, the Customer shall pay any and all fees that would have been due under such Schedule(s) or this Agreement through the end of the then-current term (i.e., either the initial term or the Renewal Term, as applicable); provided that, with regard to Professional Services, such amount will be based upon the estimated cost of the Professional Services. The parties herein agree that the above-mentioned compensation to Cirro, is a fair and reasonable estimate of actual damages (i.e., liquidated damages) required to make Cirro whole.

9. Indemnification

9.1. Indemnification Obligations

- a. Each party agrees to indemnify, defend and hold harmless the other party against any claims, losses, liabilities, damages, costs or expenses including reasonable attorney's fees and other professional fees arising from a third-party claim (collectively "Losses") resulting from bodily injury, death or property damage (excluding intellectual-property claims) caused by the wilful misconduct of the indemnifying party. To the extent that either party is liable for any damage to, or loss of, property for any reason, such liability will be limited solely to the then-current replacement value of the equipment, excluding lost data or software.
- b. the Customer shall indemnify, defend and hold harmless Cirro against any Losses resulting from:
 - (I) an allegation that the Customer-Supplied Software, the Customer-Supplied Hardware, or other the Customer supplied materials
 - a. infringes or misappropriates any third party's copyright, United States or United Kingdom patent, trade secret, trademark or similar proprietary right or
 - b. is not properly licensed for the use contemplated by this Agreement;
 - (II) any the Customer Data;
 - (III) any violations of the Acceptable Use Policy.
- c. Cirro shall indemnify, defend and hold harmless the Customer against any Losses resulting from an allegation that the Services or Deliverables
 - (i) infringe or misappropriate any third party's copyright, United States or United Kingdom patent, trade secret, trademark or similar proprietary right or
 - (ii) are not properly licensed for the use contemplated by this Agreement.



- d. Notwithstanding the foregoing, neither party shall have an obligation to indemnify, defend or hold harmless the other party for any claim of infringement or misappropriation resulting from:
- (i) unauthorised use by the other party or an end user of, in the case of the Customer, the Services or Deliverables or, in the case of Cirro, the Customer-Supplied Software, the Customer-Supplied Hardware, or other the Customer supplied materials;
 - (ii) compliance with any written instructions of the other party;
 - (iii) modifications to any Software, Hardware or other technology that were not performed by or at the written direction of such party.

9.5. Indemnification Process

A party seeking indemnification hereunder (the “indemnified party”) promptly shall notify the other party (the “indemnifying party”) in writing of any claim for which indemnification is owed hereunder. The indemnified party shall permit the indemnifying party to control the defence or settlement of any such claim and cooperate fully with the indemnifying party in such defence and settlement. The indemnifying party will defend or settle such claim at its sole expense and indemnify the other party against any damages and costs awarded by a court of final jurisdiction in an action relating to such claim or pursuant to a settlement agreement.

10. Limitation of Liability

10.1. Types of Damages

EXCEPT WITH RESPECT TO:

- (I) THE CUSTOMER’S OBLIGATIONS UNDER SECTION 9.1 (b)(ii) AND (iii) OF THIS MSA

AND

- (II) BOTH PARTIES OBLIGATIONS IN SECTION 9.1(a) OF THIS MSA, IN NO EVENT SHALL EITHER PARTY BE LIABLE (WHETHER IN CONTRACT, NEGLIGENCE OR OTHERWISE) FOR:

- a. ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA OR LOSS OF PROFITS,

OR

- b. ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, IN EACH CASE ARISING OUT OF, OR IN ANY WAY



CONNECTED WITH, THIS AGREEMENT, THE SERVICES, ANY CIRRO OR CUSTOMER-SUPPLIED SOFTWARE OR THIRD-PARTY SOFTWARE EVEN IF EACH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2. Limitation of Liability

EXCEPT WITH RESPECT TO:

- (I) EACH PARTY'S OBLIGATIONS UNDER SECTION 9.1(a) AND 10 OF THIS MSA
AND
- (II) THE CUSTOMER'S OBLIGATIONS UNDER SECTION 4.1 AND 8.5 OF THIS MSA,
AND SECTION 9.1 (b)(ii) AND (iii) OF THIS MSA

IN NO EVENT WILL EITHER PARTY HAVE LIABILITY IN THE AGGREGATE UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, NEGLIGENCE OR OTHERWISE), FOR ANY AMOUNT IN EXCESS OF THE TOTAL AMOUNT PAID BY THE CUSTOMER UNDER THE APPLICABLE SCHEDULE DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM ARISES.

10.3. Basis of the Bargain; Failure of Essential Purpose

The parties acknowledge that

- (a) Cirro has set its prices, and the parties have entered into this Agreement, in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement and
- (b) the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if this Agreement is found to have failed its essential purpose. Nothing in this Agreement shall limit or exclude the liability of a party for death or personal injury caused by its negligence, nor for fraud or fraudulent misrepresentation.

11. General

11.1. Relationship of Parties

Nothing in this Agreement will be construed to imply a joint venture, partnership or agency relationship between the parties, and Cirro will be considered an independent contractor.

11.2. No Third-Party Beneficiaries



This Agreement is for the sole benefit of the parties hereto and their permitted successors and assigns and shall not be construed as conferring any rights on any other party.

11.3. Assignment

Neither party may assign its rights and liabilities under the Agreement without the consent of the non-assigning party, which shall not be unreasonably withheld, conditioned or delayed; provided that either party shall be obligated to assign this Agreement to a successor in interest in the event of a change of control resulting from a merger, sale of stock or sale of all or substantially all of the assets of a party relating to the Services and Cirro shall have the right to assign this Agreement to any affiliate upon written notice to the Customer.

11.4. Subcontractors

Cirro shall have the right to use subcontractors in delivering the Services. Cirro will be responsible for the Services performed by its subcontractors.

11.5. Complete Understanding; Modification

This Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior agreements, arrangements, understandings and representations between the parties, oral or written, with respect to its subject matter. No different or additional terms set forth in a purchase order or other communication will be binding on Cirro. The parties have not relied upon any warranty, statement or representation made by any person which is not expressly set out in this Agreement.

11.6. Severability

If any portion or provision of this Agreement is held to be invalid, illegal or unenforceable, the remaining portions and provisions shall remain in full force and effect.

11.7. Conflicts

In the event of any conflict or inconsistency between the provisions of this MSA and those of a Schedule, the Schedule shall prevail. In the event of any conflict or inconsistency between the provisions of a Sales Order and any other Schedule, the Sales Order shall govern.

11.8. Notices

Notices, requests and demands expressly contemplated by this Agreement shall be in writing and shall be deemed to have been duly given

- (a) 1 business day after being given to an overnight courier with a reliable system for tracking delivery or



- (b) 3 business days after the day of mailing, when mailed by registered or certified mail, return receipt requested, postage prepaid. All notices shall be sent to the addresses indicated in the signature line.

11.9. Counterparts; Facsimile and Electronic Signatures

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. For purposes of this Agreement, a facsimile of a party's signature printed by a receiving facsimile machine or computer shall be deemed an original signature.

11.10. Headings

All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

11.11. Legal Consultation

The Customer acknowledges that it

- (a) is aware of its right to consult with an attorney prior to executing this Agreement;
- (b) has, prior to executing this Agreement, either consulted with an attorney or knowingly, freely and voluntarily waived its right to do so;
- (c) has carefully read and fully understands all of the provisions of this Agreement;
- (d) is entering into this Agreement knowingly, freely and voluntarily in exchange for good and valuable consideration.

11.12. Governing Law; Consent to Jurisdiction

This Agreement and any disputes arising out of or in connection with it or its subject matter (including without limitation non-contractual disputes) shall be governed by and construed in accordance with the laws of England. The courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this Agreement or its subject matter.

11.13. Force Majeure

Except with respect to any payment obligations through the date of the force majeure event, neither party will be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, and will be entitled to a reasonable extension of time to remedy any such delay or failure to perform.



11.14. Waiver or Failure to Act

No waiver of an obligation herein will be effective unless documented in writing and signed by an authorised representative of the party against which enforcement of the waiver is sought. No failure to act or enforce any provision hereof shall be construed as a future waiver of any right hereunder.

IN WITNESS WHEREOF, the parties have executed this MSA by their duly authorised representatives.

Schedule 1 - Cloud Hosting Service

1. Term, Renewal and New Services Parts

The term of this Cloud Hosting Service will commence on the Effective Date and shall be in effect so long as there is a Sales Order purchased by the Customer are in effect. Unless either party gives the other party written notice 30 days' prior to the end of then-current term, a Sales Order

shall automatically renew for successive month-to-month terms.

From and after the Effective Date, Cirro shall notify the Customer's designated users about new Cloud Hosting Services. When a new Services is available for use by the Customer, each designated user, shall receive a pop-up message via Portal advising him/her about such new Services part and such user must electronically acknowledge the notification in order to continue use of Portal. Thereafter, such user is able to, but not required to, purchase such new Services part(s) on behalf of the Customer.

2. Fees and Payment Terms

Fees for Services shall be as set forth in a Sales Order and the payment terms shall be as set forth in the MSA. In order to receive Cloud Hosting Service the Customer agrees to pay a monthly minimum 'right to use' fee as indicated in its Sales Order (the "RTU") In the event the Customer's actual usage in any month is less than the RTU then the Customer shall be obligated to pay the entire RTU. If the Customer's actual usage in any month exceeds the RTU, then the Customer shall be invoiced for the actual usage. For the avoidance of doubt, the RTU is specific to each month that the Customer receives Cloud Hosting Service and is considered the monthly minimum commitment by the Customer to Cirro. The RTU owed under this Agreement shall be prorated if the Fully Implemented Date is after the first day of the month.

3. Usage-Based Model

The Customer may use the Cloud Hosting Service without predicting actual usage. Cirro reserves the right to monitor the Customer's usage and further reserves the right to contain usage in its sole discretion. If Cirro contains the Customer's usage in any month and if the Customer's actual usage in such month is below the RTU, the Customer shall not be held liable for the RTU for that particular month and shall only be billed in that month for its actual usage.



Additionally, the Customer may request to add or decommission Cloud Hosting Service provided Cirro is given no less than ten business days' written notice. Adding or decommissioning of Cloud Hosting Service may be completed through an online, self-regulated Customer interface, the Customer agrees to pay for all Cloud Hosting Service that are purchased via a Sales Order.

4. Management Options for Cloud Hosting Servers

The Customer may choose from the following two server-management options:

- A. Customer-managed servers – Cirro provides computing and network resources, but bears no management or monitoring responsibilities for the virtual servers, or
- B. Fully-managed servers – Cirro provides computing and network resources and full monitoring and management of the virtual servers.

Conversion of a server from the Customer-managed to fully managed may be requested by the Customer and may require up to 10 business days for implementation of the monitoring and management components.

5. Cloud Hosting Service - Server Components

The following components and services are offered:

- (1) Computing resources;
 - CPU (measured in Ghz)
 - Memory (measured in GB)
 - Storage (measured in GB)
- (2) Server management (as described below in Section 8);
- (3) Firewall services (as described below in Section 9); and
- (4) Load balancing (as described below in Section 10).

6. Cirro Responsibilities for the Customer-Managed Servers

6.1. The Customer-Managed Server

Subject to the terms and conditions hereof:

- 6.1.1. Cirro shall provide the CPU, memory, storage, and bandwidth services.
- 6.1.2. The Customer shall be responsible for any licenses fees for any the Customer-supplied operating system (“OS”) or software.
- 6.1.3. Cirro will provide monitoring functionality that will issue alerts to the Customer and allow the Customer to monitor its own Services environment.



- 6.1.4. Cirro will not receive or act on any alerts generated within the Customer-managed environment.

6.2. Fully-Managed Server

Subject to the terms and conditions hereof:

- 6.2.1. Cirro shall provide the CPU, memory, storage, and bandwidth services. Cirro shall provide the OS licenses and any underlying virtualization products.
- 6.2.2. Cirro will not manage or monitor the continued uptime of applications beyond providing the computing resources listed in Section 5 (1) above and supporting the OS availability. Cirro shall not pay for any license fees for any the Customer-Supplied Software unless specifically purchased from Cirro and referenced on a Cirro Sales Order and/or ordered through the Cloud9 Portal by the Customer.
- 6.2.3. Cirro-Supplied Software and Cirro-Supplied Hardware shall be supplied subject to the warranties, limitations and other terms and conditions set forth in the applicable third-party vendor agreements. Cirro will manage and coordinate the process of resolving issues with third-party vendors.

7. Customer Responsibilities for the Customer-Managed Servers

The Customer shall perform the provisioning of the servers and the Customer will have full control over the contents of its servers. Servers with Cirro-provided OS or software may not be transferred out of Cirro data centres.

Regardless of which environment the Customer chooses, the Customer-Managed or Fully-Managed, the Customer shall be responsible for scoping the capacity and Services requirements for its own environment. Cirro shall not be liable or pay any SLA credits for any issue that is directly or indirectly related to or caused by improper scoping by the Customer.

Cirro will provide the Customer with a single administrative account which will have the ability to allocate resources and incur charges. The Customer will have the ability to create additional users and control the ability of those users to perform actions that may incur charges or otherwise alter the environment. The Customer is responsible for all charges incurred or alterations to the environment by its users.

8. Server Management for Fully-managed servers

Cirro server management provides the following service components:

- i. 24x7 monitoring of OS;
- ii. Security patching and anti-virus management;
- iii. Post-implementation project management provided by a customer relationship manager;
- iv. Firewall services;



- v. Incident management, system administration and change management technical support services for network connectivity, server hardware, and OS.

9. Firewall Services

9.1. Firewall services can be provided via the following models:

- a. A shared firewall which is included in the price of managed-bandwidth services,
or
- b. A physical firewall provided by Cirro and dedicated to the Customer's environment.

The components specific to the Firewall services include the following:

9.2. Installation and Provisioning Services;

- 1. Configuration of basic network parameters to establish network connectivity to the internal and external network segments;
- 2. Creation of a firewall policy that allows Cirro and Customer administrator access. The default policy is designed to deny all other traffic;
- 3. Cirro acquires, installs, configures and tests the managed firewall platform;
- 4. Cirro confirms that the ability to manage the firewall configuration is available and ready to process the Customer's designated firewall policies.

9.3. Cirro Services Firewall-Management Options

- 1. The Customer-managed model
 - a. all firewall administration is performed by a single Customer administrator;
 - b. The Customer administrator will be responsible for the creation and maintenance of all firewall rules and will be liable for any consequences resulting from those rules.
- 2. Cirro-managed model (as a billable service) –
 - a. designated Customer users may be able to submit rule changes to Cirro
 - b. the final deployment would be performed by Cirro personnel after examination for adherence to security best practices as reasonably determined by Cirro.
- 3. Cirro reserves the right to review any Customer-requested firewall-policy changes and may provide recommendations for improvements. Cirro shall not be liable or pay any SLA credits for any issue that is directly or indirectly related to firewall policies approved or implemented by the Customer.



10. Cirro Load-Balancing for Fully-managed and Customer-managed servers

Load balancing services can be provided via a dedicated virtual load balancer wherein each Customer has one or more load balancing virtual appliances per server.

Cirro Services Load Balancing-Management Options can follow one of the following models:

- A. The Customer-managed model – all load balancer administration is performed by a single Customer administrator, who will be responsible for the creation and maintenance of all load balancer rules and will be liable for any consequences resulting from those rules.
- B. Fully-managed model– the Customer’s users may be able to submit rule changes to Cirro, but the final deployment would be performed by Cirro after examination for adherence to security best practices as reasonably determined.

- 10.1. Load-Balancing Configuration. All load balancing rules for Cloud Hosting Service, Shared Load Balancing and Dedicated Virtual Load Balancing are created and maintained by the Customer. Cirro shall not be liable or pay any Credits for any issue that is directly or indirectly related to misconfigured rules.

11. Shared Physical Tape Data Backup Retention

The Customer acknowledges that if the Customer orders shared physical tape data backup Services, Cirro cannot destroy, extract, or encrypt the Customer Data. Furthermore, Cirro can provide for an additional fee, a restore of the Customer Data during the applicable Schedule term, or for a specified period thereafter, if agreed to in a duly signed writing by the parties, excluding any operating system or application licenses’ data.

12. Dedicated Physical Tape or Online Data Backup Retention

If the Customer desires to receive dedicated physical tape or online data backup retention Services, the Customer must request the same upon the Effective Date of the applicable Schedule. If the Customer orders dedicated physical tape or online data backup Services, Cirro:

- (a) can destroy, extract or restore data upon request for an additional fee, during the applicable Schedule term, or for a specified period thereafter, if agreed to in a duly signed writing by the parties, excluding any operating system or application licenses’ data, and
- (b) can provide data encryption upon request for an additional fee for dedicated physical tapes; online backup will be encrypted by default.

The Customer acknowledges and agrees that Cirro is not obligated to retain or backup any Customer Data following the termination of this Agreement or a Schedule. If the Customer utilises any of Cirro’s data-backup Services, the Customer has the option to purchase a copy of all of the Customer’s Data, which copy shall be made after this Agreement has been terminated. In order for this backup to take place:



- (a) the Customer must make a written request 30 days before the end of this Agreement;
- (b) a Schedule must be executed by the Customer and Cirro for the performance of the backup Services, which Schedule shall set forth the names and locations of the specific folders to be backed up.

Using HP Data Protector or similar software, Cirro shall archive such folders to a series of magnetic tapes and send them overnight using a commercial courier service to the Customer. Cirro shall not be responsible for encrypting such tapes unless otherwise agreed to in a Schedule or unless Cirro is required to encrypt such tapes pursuant to applicable law. After such backup has been performed and tested, Cirro shall dispose of the Customer Data remaining within Cirro facilities pursuant to Cirro's standard data-disposal procedures.

13. Step in Rights

- 13.1. The Customer may exercise step in rights pursuant to this clause by notice in writing to Cirro where:
 - a. An Insolvency Event has occurred in relation to Cirro;
 - b. The Customer has terminated or given notice to terminate this Agreement pursuant to clause 8.4 of the MSA;
 - c. The Customer has paid all amounts outstanding and owing to Cirro as at the date on which such notice is served; and
 - d. Cirro has failed to provide the Customer with termination assistance in accordance with clause 8.5(e) of the MSA.
- 13.2. Any such notice must be given within one month of the Customer's notice of termination and shall include such information as is reasonably required from the Customer to enable it to co-operate with the Customer in relation to the exercise by the Customer of its step-in rights pursuant to this clause.
- 13.3. Where the Customer exercises its step-in rights pursuant to paragraph 13.1 above, Cirro shall permit the Customer to enter its premises and operate those assets of Cirro as may be necessary to enable the Customer to access the Customer Data and the Customer Supplied Software and to retrieve or migrate such data and software to a new platform supplied by the Customer or a third party appointed by the Customer. The right shall not in any event include a right to incur any further liability for Cirro.
- 13.4. The Customer may in writing appoint full time employees or a third party to monitor and assist in the exercise of the Customer's step-in rights pursuant to this clause provided that such third party signs a non-disclosure agreement acceptable to Cirro. Neither the Customer nor any third party appointed by the Customer shall be permitted to access any data belonging to any other customers of Cirro.



13.5. While the Customer or any third party is exercising step-in rights pursuant to this paragraph 13, Cirro shall have no liability whatsoever under or in connection with this Agreement arising from the manner in which the step in right is exercised by the Customer, or for Service Credits during the period for which the step in rights are exercised.

13.6. The Customer shall exercise its step-in rights under this paragraph 13 as expeditiously as possible. the Customer's rights under this paragraph 13 will cease on the earlier of the removal of all the Customer Data and the Customer Supplied Software from Cirro s systems or the date one month from the date of the Customer's written notice exercising the right.

IN WITNESS WHEREOF, the parties have executed this Cloud9 Schedule by their duly authorised representatives.

Schedule 1 - Exhibit A Cloud Hosting Service Level Agreement

The Cloud Hosting Services service-level agreements (collectively "SLAs" and individually a "SLA") are made subject to the terms and conditions set forth in this Agreement and the Portal executed between the parties (each, a "Party" and, together, the "Parties"). If the Parties have not executed a MSA, the terms and conditions of Cirro's standard MSA are hereby incorporated into these SLAs by reference. Any terms used herein but not defined herein shall have the meanings ascribed to them in this Agreement. If any provision of these SLAs and any provision of this Agreement are inconsistent or conflicting, the inconsistent or conflicting provision of these SLAs shall be deemed an amendment of this Agreement and shall control, but only to the extent that such provision is inconsistent with this Agreement.

1. Definitions

"Services Availability" means, with respect to each of the Covered Services (defined below), it's functioning as intended without any significant interruption due to hardware, power or network failure.

"Covered Services," include:

- CPU, Memory, and Disk
- All Load Balancing Services
- All Connectivity Services
- All Firewall Services
- All VPN Services

"Credit" means a percentage of the monthly recurring fee based upon the 95th percentile of actual usage for that calendar month.

"Network Operations Centre (NOC)" is the facilities used to build, run, monitor and maintain the Cloud9 Service and from where Cloud9 staff reside physically or virtually.



“Trouble Ticket” is issued by the Network Operations Centre when the Customer raises a fault or issue with the Service or when the NOC identifies a Service affecting issue. Each Trouble Ticket has a unique reference number

2. Reporting

The Customer will be entitled to Credits as outlined below if the Customer:

- (1) provides written notice to Cirro of the circumstances giving rise to the Credit request,
- (2) provides such written notice within 15 calendar days after the last day of the calendar month within which such circumstances occurred and
- (3) identifies each applicable trouble ticket that relates to the SLA and with respect to which the Customer seeks Credit, including the dates and times on which such trouble tickets were opened and closed.

3. Credit Policy

For any billing month in which a failure to meet the foregoing guarantee with respect to a particular Covered Services, the Customer will, subject to the “Credit Exceptions” listed below, receive, as its sole and exclusive remedy and Cirro’s sole obligation for such failure, credit to its account based on the structure set forth in the chart below and the actual duration of the interruption of such Covered Services, as measured from the issuance of a trouble ticket by the Network Operations Centre to the restoration of the affected Covered Services. The amount of Credit is stated below as a percentage for such affected Services for the applicable calendar month.

4. Credit Exceptions

- 4.1. The Customer is limited to receiving an aggregate Credit of 50% for the applicable calendar month under all SLAs between the Customer and Cirro.
- 4.2. Credit will not be issued under this SLA for any Covered Services outage that, as determined by Cirro in its reasonable judgment, results from:
 - a. The Customer-initiated changes, whether implemented by the Customer, or the Cirro NOC staff on behalf of the Customer;
 - b. The Customer exceeding system capacity;
 - c. Viruses, except to the extent that such outage results from a failure to apply a generally available and approved countermeasure within six hours of a documented outbreak;
 - d. The Customer’s failure to adhere to Cirro’s change-management process and procedures;
 - e. Force Majeure or natural disasters;



- f. Any event or condition not wholly within the control of the Cirro NOC;
- g. Violations of the Acceptable-Use Policy;
- h. The negligence or wilful misconduct of the Customer, its agents or others it authorised to use the Services;
- i. Any failure of any component for which the Cirro NOC is not solely responsible, including, without limitation, all the Customer-provided or the Customer-managed electrical-power sources, networking equipment, computer hardware, computer software, internet connectivity, local and wide area networks, or website content;
- j. Any failure of the Customer-provided local-access facilities;
- k. Any scheduled maintenance up to an accumulated total of 16 hours per month, provided that four business days' standard notification of the scheduled maintenance event is given;
- l. Any emergency maintenance up to an accumulated total of four hours per month, provided that (a) the need for emergency maintenance prior to a scheduled-maintenance window can be established, (b) delaying the maintenance presents a material risk of unplanned downtime and (c) a minimum one hour's standard notification is given;
- m. Any failures that cannot be corrected because the Customer is inaccessible; or
- n. Incorrect or inadequate configuration of Cirro resources (including without limitation all the Customer-managed Services) by the Customer.

5. Incident-Management Service-Level Agreement Definitions

“High Priority Incident” An incident that results in a severe service disruption of the critical infrastructure components and demands immediate attention, where no single work-around exists and business risk is high.

“Incident Detection” The capturing and confirming of the existence of a Service affecting incident by the NOC.

“Mean Time to Assign” The interval from creation of a trouble ticket until the incident is assigned to a second-tier engineering resource who places the ticket into status of “Work in Process,” stated as an arithmetic mean calculated over a calendar month.

“Mean Time to Notify” The interval from incident detection until initial notification to the Customer including, without limitation, the creation of a trouble ticket, stated as an arithmetic mean calculated over a calendar month.

“Urgent-Priority Incident” An incident that results in significant downtime, interruption or degradation of any critical infrastructure components or the Customer servers and in significant operational impact.



6. Operations Centre Response Times

The following chart shows targeted response times for Urgent and High-Priority

Priority	Response Time
Priority 1 – Severe Business Impact <ul style="list-style-type: none"> • Internet connection down and/or lack of any communications • Serious security failure (Widespread Virus outbreak or attack) • Major outage of any part of the system • Identification of a significant failure of any part of the system including for the avoidance of doubt: <ul style="list-style-type: none"> • Critical client deliverable(s) are impacted • Significant infrastructure/critical services/systems fail or are unavailable • Data is lost or corrupted (including the provision of incorrect information to the Customer) 	45 Minutes
Priority 2 – Considerable Business Impact <ul style="list-style-type: none"> • Partial impact to >50% of users for a non-business critical service • Non-critical impact to any business service • Non-critical impact with no ongoing visibility of an event or failure to clients and/or the Customers, including non-critical enquiries • Service degraded for non-business critical service 	1 Hour
Priority 3 – Limited Business Impact <ul style="list-style-type: none"> • Partial impact to any <50% of users for a non-business critical service • Individual's ability to work affected • Individual's efficiency affected • Service slightly degraded for non-business critical service 	2 Hours
Priority 4 – Minimum Business Impact <ul style="list-style-type: none"> • Minimal impact to any non-business critical service • Individual ability to work partially affected • Individual's efficiency not affected • Service for non-business critical service unaffected 	4 Hours
Priority 5 – Proactive Maintenance <ul style="list-style-type: none"> • Any work carried out with no impact to the business 	8 Hours