

Mirus General Terms



1. Agreement

1.1. Each time you execute a Letter of Engagement or an Order Form a contract will be formed between you and us for the Services (**Agreement**) comprising of terms specified in:

- (a) the Letter of Engagement or Order Form;
- (b) the Standard Service Schedule and/or Statement of Work;
- (c) these General Terms; and
- (d) any documents incorporated by reference in any of the documents listed in clauses 1.1(a), 1.1(b) and 1.1(c).

1.2. If there is any inconsistency between the components of the Agreement, the component listed first in clause 1.1 will prevail to the extent necessary to resolve that inconsistency.

2. Term

The Agreement commences on the earliest Service Start Date and continues until the Agreement expires, terminates or we are otherwise no longer obliged to supply the Services to you (**Term**).

3. Services and Deliverables

3.1 We must supply each Service to you:

- (a) in a professional and competent manner, with the degree of skill, care and diligence expected of a professional providing services which are the same as, or equivalent to, that Service;
- (b) for the relevant Service Term; and
- (c) otherwise in accordance with the terms of the Agreement.

3.2 If a Service Description specifies that a Service is only supplied during particular hours, we are only obliged to supply that Service during those hours.

3.3 We supply the Services and the Deliverables to you on a non-exclusive basis and we reserve the right to supply identical or similar services to any other person.

3.4 The Services and the Deliverables are for your exclusive use and must be used only by you and your Personnel for the internal business operations of the Facilities. You must not, and must ensure that your Personnel do not, allow any third party to access, use or realise the benefit of the Services

or the Deliverables without our prior written consent.

3.5 We may, at our sole discretion, impose any conditions we consider necessary on the granting of our consent under clause 3.4 and (where applicable) you must ensure that any third party complies with those conditions.

3.6 You may only rely on Deliverables that contain advice or recommendations to the extent that they are in a final written form and any assumptions, information or context on which the Deliverables are based remain true and correct.

3.7 You acknowledge and agree that:

- (a) the Services and the Deliverables may include advice and recommendations, but all decisions relating to the implementation of that advice or any of those recommendations will be your responsibility and made by you; and
- (b) we do not act in any management or clinical capacity by recommending or executing any actions based on any of the findings as part of the Services.

4. Mirus Tools and Content

4.1 This clause 4 applies if we give you access to any of the Mirus Tools and the Content as part of the Services.

4.2 You acknowledge and agree that:

- (a) your access may not be continuous or uninterrupted and from time to time the Mirus Tools and the Content will be unavailable (including for the purposes of planned maintenance); and
- (b) the Mirus Tools and the Content may contain errors,

and subject to clause 21.3, we exclude any liability to you for any Losses that you may incur as a result.

4.3 To the extent that we are able to do so, we must advise you of any planned maintenance that will impact your ability to access the Mirus Tools and the Content.

4.4 You may nominate members of your Personnel as 'authorised users' of the Mirus Tools and the Content using the processes specified by us (acting reasonably) from time to time. Once approved by us, these persons are **Authorised Users** and we shall provide each person a unique user name and password (**Login Details**).

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- 4.5 You must ensure that each Authorised User keeps their Login Details confidential.
- 4.6 You may request to change your Authorised Users by using the processes specified by us (acting reasonably) from time to time.
- 4.7 If a Service Description specifies that there is a maximum number of Authorised Users you must not exceed this number without our prior written consent. If you breach this clause 4.7, we are entitled to invoice you for any excess users at the rates set out in the Letter of Engagement or the Order Form.
- 4.8 You must:
- (a) provide, maintain and support all end user devices used to access the Mirus Tools or the Content;
 - (b) only use the Mirus Tools and the Content in accordance with the Agreement, any relevant policies or procedures that we publish, and any reasonable directions given by us;
 - (c) not publish, sell, resell, license, sublicense, distribute, make available, rent or lease any of those Mirus Tools or the Content or include any Mirus Tools or Content (or access to them) in any service bureau or outsourcing offering;
 - (d) not use the Mirus Tools or the Content to contravene a Law, or to transmit or store Harmful Code;
 - (e) not use the Mirus Tools to develop, store or transmit infringing, defamatory, or otherwise illegal, unlawful or tortious material, or to develop, store or transmit material in violation of any person's rights (including Intellectual Property Rights);
 - (f) not interfere with, or disrupt, the integrity or performance of the Mirus Tools, the Content or any other person's data stored in the Mirus Tools;
 - (g) not attempt to gain unauthorised access to the Mirus Tools, the Content, any other data stored in those Mirus Tools or the infrastructure on which the Mirus Tools are operated;
 - (h) only allow Authorised Users to access and use the Mirus Tools and the Content and must not permit direct or indirect access to, or use of, any Mirus Tools or Content that in any way circumvents the Maximum Number of Authorised Users;
- (i) not frame, mirror, copy or modify any part, feature, function or user interface of the Mirus Tools or the Content;
 - (j) not access or use the Mirus Tools or the Content to build a competitive product or service or to benchmark the Mirus Tools, the Content, any of the Services and/or and other Deliverables;
 - (k) not translate, reverse engineer, decompile or disassemble the Mirus Tools or the Content or create any derivative works based on the Mirus Tools or the Content; and
 - (l) not remove any trade mark, trade name, proprietary marks or symbols, copyrights, trade secret or warning legend from any of the Mirus Tools or the Content.
- 4.9 You must ensure that your Personnel and any Authorised Users comply with the requirements of clause 4.8.
- 4.10 You acknowledge and agree that the Mirus Tools or the Content may include services, material or software provided by third party suppliers to us. You must, and must ensure that your Personnel and all Authorised Users:
- (a) comply with any terms of the third party supplier that we advise you of; and
 - (b) not do, or fail to do anything, that causes us to breach, or incur any liability under, an agreement with a third party supplier to the extent that we have advised you of the terms of that agreement.
- 4.11 We may revoke, suspend or limit one or more Authorised Users' access to any of the Mirus Tools or the Content if you or any of your Authorised Users:
- (a) breach any obligation in this clause 4; or
 - (b) exceed the scope of the rights to use the Mirus Tools or the Content set out in the Agreement.
- 4.12 Subject to clause 21.3, we exclude any and all liability to you for all Losses that you suffer or incur relating to us revoking, suspending or limiting one or more Authorised Users' access under clause 4.11.
- 4.13 If we exercise a right under clause 4.11, you must continue to pay, and will not be entitled to any refund of, the Service Fees relating to the period of the revocation, suspension or limitation.

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5. Changes to our offering

5.1 We may, from time to time, change the Services or the Deliverables and if the change is material we will notify you of that change.

5.2 We must not make a change which reduces the scope of Services that we supply to you or the features or functionality of the Mirus Tools or the Content without your prior written consent (which you must not unreasonably withhold or delay).

6. Your responsibilities

6.1 You must:

- (a) provide all information, material and other inputs and assistance that we request (acting reasonably) in relation to our performance of the Agreement; and
- (b) perform all tasks, activities, functions and responsibilities that are either allocated to you, or not allocated to us, in the Agreement,

in timeframes and a manner that allows us to perform our obligations under the Agreement.

6.2 You must:

- (a) ensure that all information and materials that you provide to us are accurate, complete and not misleading; and
- (b) promptly inform us to the extent that you become aware that any information or materials provided to us are inaccurate, incomplete or misleading.

6.3 You acknowledge and agree that we will rely on the information or materials that you, or your Personnel, provide to us.

6.4 Subject to clause 21.3, we exclude any and all liability to you for all Losses incurred by you relating to any breach of the Agreement by us to the extent it was caused by your failure to comply with this clause 6.

7. Delays

7.1 We will use reasonable endeavours to anticipate and manage delays in the supply of the Services and Deliverables.

7.2 Subject to clause 21.3, we exclude any and all liability to you for all Losses incurred by you for any delays in supply caused by:

- (a) an act or omission of you or your Personnel (including a breach of clause 6); or

- (b) any other event that is beyond our reasonable control,

and the due date for supply of the affected Services or Deliverables (and any dependent obligations) will be automatically extended to reflect the length of the delay.

8. Non-solicitation

8.1 You and your Personnel must not solicit, entice away or attempt to solicit or entice away, any member of our Personnel during the Term and for a 6 month period commencing after the date the Term ends.

8.2 You agree that this restriction is reasonable in the circumstances and necessary to protect our business.

9. Amounts you must pay

9.1 You must pay us:

- (a) the Service Fees;
- (b) all Pass-through Expenses that we incur in performing our obligations under the Agreement; and
- (c) all costs and expenses that we incur to provide information about you or the Services or the Deliverables to comply with a Law, court order or other compulsory process (including legal costs and time spent by our Personnel).

9.2 We will not charge you any margin or administrative charge in connection with the Pass-through Expenses.

10. Annual Increases in the Service Fees

10.1 On or after the anniversary of the Service Start Date for a Standard Service, we may increase the Service Fees for that Standard Service by a percentage amount no more than the greater of:

- (a) the then most current annual Consumer Price Index All Groups 8 Cities as published by the Australian Bureau of Statistics; and
- (b) 5%.

10.2 We must give you at least 10 Business Days notice of any increase pursuant to clause 10.1 (**Increase Notice**).

10.3 An increase pursuant to clause 10.1 takes effect on the later of:

- (a) the date specified in the Increase Notice; and

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- (b) the date which is 10 Business Days after the date on which you received the Increase Notice.
11. Other **Increases**
- 11.1 If the Letter of Engagement or the Order Form for a Service specifies that the Service Fees are calculated by reference to a particular metric (**Fee Metric**):
- (a) we may audit your Facilities no more than once in each 3 month period to determine whether the actual quantity of that Fee Metric at your Facilities (**Actual Quantity**) is greater than the Baseline Quantity; and
 - (b) separately, you must notify us of any event which may or will occur which does, will or could impact the Actual Quantity during the Term promptly upon becoming aware of the event.
- 11.2 You must promptly provide us with all information, access and other assistance necessary for us to conduct an audit under clause 11.1(a), investigate the potential impact of an event notified under clause 11.1(b), or otherwise accurately calculate a Service Fee change pursuant to clause 11.3.
- 11.3 If we determine following an audit or investigation of a notified event that the Actual Quantity is or will be greater than the Baseline Quantity, we may change the Service Fees for that particular Service by an amount calculated as follows:
- $Amount = (A - B) \times C$
- where:
- A** means the Actual Quantity;
 - B** means the Baseline Quantity; and
 - C** means our then current standard rate for the applicable Fee Metric.
- 11.4 If we wish to change the Service Fees in accordance with clause 11.3, we must give you a notice specifying:
- (a) the Actual Quantity identified;
 - (b) the new Service Fees; and
 - (c) the date from which the change to Service Fees takes effect.
- 11.5 If we give you a notice under clause 11.4:
- (a) the Service Fees will be varied for the purposes of the Agreement to reflect the Service Fees specified in that notice;
 - (b) to the extent that we have already given you an invoice for the Service Fees for a period during which the Baseline Quantity was exceeded, we may give you another invoice for an additional amount equal to the difference between:
 - (i) the Service Fees that you paid, or are liable to pay; and
 - (ii) the Service Fees that would have been payable during that period had the increased Service Fees applied; and
 - (c) the Baseline Quantity will be varied for the purposes of the Agreement to reflect the Actual Quantity specified in that notice.
12. Invoicing
- 12.1. We may give you an invoice for:
- (a) the Service Fees, at the times specified in the applicable Service Description, or if no time is specified, on a monthly basis in arrears;
 - (b) the Pass-through Expenses and other costs and expenses that we are entitled to recover from you under the Agreement, at any time after those costs or expenses have been incurred; and
 - (c) the amounts specified in clause 11.5, at the times specified in clause 11.5.
- 12.2 You must pay all undisputed amounts specified in an invoice within 14 days of the date of receipt of that invoice unless otherwise specified in a Letter of Engagement or an Order Form.
- 12.3 If you do not pay us any amount specified in an invoice in the time frame specified in clause 12.2 (**Outstanding Amount**), then:
- (a) you must pay us, at the time you pay the Outstanding Amount, interest calculated on a daily basis for the period between the date on which payment of the Outstanding Amount was due and the date on which the Outstanding Amount was paid using the rate which is the greater of:
 - (i) 18% per annum; and
 - (ii) the rate (if any) fixed or payable under a judgment; and

Commented [JK1]: We have made these changes in response to the following request:

Clause to say that the billed fee will be based on the number of beds/employees for all facilities under ownership or management and will be adjusted on a pro rata basis during the contract term for any variations due to acquisition or divestment.

As discussed, these changes reflect our understanding that:

1. The above is a description of how the Fee Metric works in practice (in this scenario, the number of beds/employees would be a Fee Metric in the Letter of Engagement or Order Form).
2. Mirus is happy to increase or decrease the Service Fees by reference to the Fee Metric change (not just increase) - and this is the case whether it is a change in beds, employees or any other Fee Metric type that might be in the Letter of Engagement or Order Form. We note your instructions that this is already the current practice.

The changes reserve your audit rights but also impose a positive obligation on the client to inform as to any changes.

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- (b) we may, without any liability to you, suspend the supply of the Services and Deliverables until such time as you pay the Outstanding Amount and any interest that has accrued pursuant to clause 12.3(a).
- 12.4 If we suspend the supply of the Services and the Deliverables in accordance with clause 12.3(b), you must continue to pay, and will not be entitled to a refund of, the Service Fees during the suspension.
13. GST
- 13.1 Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning given to them in that Act.
- 13.2 Unless otherwise stated, any amount specified in the Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- 13.3 Subject to clause 13.4, if:
- (a) a party makes a taxable supply under the Agreement (**Supplier**); and
 - (b) that taxable supply is not specified as being inclusive of GST,
- then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 13.4 The Recipient is not obliged under the Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- 13.5 If an adjustment event arises in relation to a taxable supply made by a Supplier under the Agreement, the amount paid or payable by the Recipient pursuant to clause 13.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- 13.6 If a third party makes a taxable supply and the Agreement requires a party to the Agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
14. Confidentiality and use of information
- 14.1 The Receiving Party agrees to keep confidential, and not to use or disclose, other than as permitted by the Agreement, any Confidential Information of the Disclosing Party.
- 14.2 The Receiving Party must take all steps and do all such things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the Disclosing Party.
- 14.3 The Receiving Party may disclose Confidential Information of the Disclosing Party:
- (a) to Personnel to the extent reasonably required for the Receiving Party to exercise its rights or perform its obligations under the Agreement; and
 - (b) as required by Law, a regulatory authority, a court or the rules of any applicable stock exchange.
- 14.4 The Receiving Party must ensure that the Disclosing Party's Confidential Information is kept confidential by the Receiving Party's Personnel.
- 14.5 If the Receiving Party is required to disclose any Confidential Information in accordance with clause 14.3(b) then, to the extent possible, the Receiving Party must before doing so:
- (a) notify the Disclosing Party and provide the details of the proposed disclosure;
 - (b) give the Disclosing Party a reasonable opportunity to take any steps the Disclosing Party considers necessary to protect the confidentiality of that information;
 - (c) provide any assistance reasonably required by the Disclosing Party to protect the confidentiality of that information; and
 - (d) notify the person to whom the Confidential Information is disclosed that the information is Confidential Information of the Disclosing Party.
- 14.6 The obligations in clauses 14.1 and 14.2 do not apply to Confidential Information that is:
- (a) in the public domain otherwise than as a result of a breach of the Agreement or another obligation of confidence;
 - (b) created by the Receiving Party (whether alone or jointly with any person)

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- independently of the Disclosing Party's Confidential Information (if the Receiving Party has evidence in writing that the information falls within this exception); or
- (c) already known by the Receiving Party independently of its involvement in the Agreement or its interaction with the Disclosing Party and free of any obligation of confidence.
- 14.7 If, at any time, we are not satisfied that you have adequate practices in place to protect our Confidential Information, we may require your Personnel to execute a deed of confidentiality in a form satisfactory to us (acting reasonably) and in these circumstances you must ensure that each deed is promptly executed and provided to us.
- 14.8 We must not modify or access your Confidential Information for any purposes other than:
- (a) performing our obligations or exercising our rights under the Agreement; or
- (b) exercising our rights under clause 14.9.
- 14.9 Notwithstanding anything in this clause 14, you acknowledge and agree that:
- (a) we may refer to you and the general nature of the Services and Deliverables that we supply to you when marketing our business and services from time to time;
- (b) we may aggregate and de-identify information and data relating to you, your Personnel, the Facilities or any of the residents we have received during the Term and where applicable after the Term pursuant to clause 24.1 (c) (including where applicable Confidential Information) to track trends and benchmark information (**Aggregated Information**); and
- (c) we may use the Aggregated Information for the purposes of providing services and deliverables to other clients from time to time.
- 14.10 For the avoidance of doubt, if Confidential Information is also Relevant Information, clause 15 also applies to the Confidential Information.
15. Relevant Information
- 15.1 Each party must comply with the Privacy Laws and relevant provisions of the Aged Care Act when dealing with Relevant Information.
- 15.2 We may transfer, transmit, store, hold, access or otherwise process Relevant Information relating to you or your Facilities, or provided by you or on your behalf within Australia.
- 15.3 Before we are provided with any Relevant Information by you or on your behalf in relation to any individual, you must take such steps as are reasonable to notify that individual of our privacy policy (at <http://www.mirusaustralia.com/privacy-policy/>) and that it contains information about:
- (a) what personal and sensitive information we collect (including that provided to us by you) and for what purposes we use it for and who we may disclose it to;
- (b) how the individual may access Relevant Information that we hold about them and how they may seek correction of that information; and
- (c) our complaints management procedures.
- 15.4 Before we are provided with any Relevant Information by you or on your behalf in relation to any individual (including a resident of a Facility), you must have obtained the consent of that individual to the:
- (a) collection, use and disclosure of the Relevant Information by us for the purposes of us in accordance with our privacy policy and as described in this Agreement including for the purpose of providing the Services and the Deliverables or otherwise performing our obligations or exercising our rights under the Agreement including rights that survive termination or expiry of the Agreement; and
- (b) disclosure by you of the Relevant Information to us, for the purposes of us performing our obligations under the Agreement.
- 15.5 You must notify us immediately if you become aware of any breach or potential breach of the Privacy Laws or the Aged Care Act by you or your Personnel.
16. Intellectual Property Rights
- 16.1 The parties acknowledge and agree that nothing in the Agreement has the effect of transferring the ownership of any Intellectual Property Rights of a party.
- 16.2 You acknowledge and agree that we and our licensors own the Supplier IPR on and from creation.
- 16.3 To the extent that you or your Personnel own any Intellectual Property Rights in the Supplier IPR, you assign, or must procure the assignment of, those

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- Intellectual Property Rights to us on and from creation.
- 16.4 You must not use Supplier IPR to develop any applications or software or to build any product or service which is the same as, equivalent to, or similar to, the products and services of us or any of our third party suppliers.
- 16.5 To the extent we have the rights to do so, we grant you a non-exclusive licence to use the Supplier IPR for the Term to the extent necessary for you to access and use the Services and Deliverables.
- 16.6 If we do not have the rights necessary to grant you the licence under clause 16.5 for any Supplier IPR that is owned by a third party supplier, we must procure a licence for you from that third party on that third party's standard terms.
- 16.7 We acknowledge that you own the Intellectual Property Rights in all information and data we have received during the course of performing our obligations under the Agreement. You grant us an irrevocable, perpetual and non-exclusive, royalty-free licence to use that information and data for the purposes of performing our obligations, or exercising our rights, under the Agreement (including our rights under clause 14.9).
- 16.8 Subject to your prior written consent, you grant us a non-exclusive, perpetual, royalty-free licence to:
- (a) use and reproduce your name, brands, logos and trademarks on the Deliverables and in our physical marketing materials and on our website; and
 - (b) include links to your websites on our websites.
17. Indemnities and release
- 17.1 You indemnify us from and against all Losses that we suffer or incur relating to:
- (a) a breach by you of the Agreement;
 - (b) a claim or action by a third party against us that arises as a result of any use of or, disclosure or distribution of, or reliance on, the Deliverables that is contrary to the terms of the Agreement;
 - (c) a claim or action by a third party against us arising as a result of supplying the Services or Deliverables to you to the extent that those claims were not caused by us or any of our Personnel;
 - (d) any inputs, information, data or other material provided by you or any Supplier IPR that you assign under clause 16.3; or
 - (e) your acts or omissions or the acts or omissions of any of your Personnel.
- 17.2 We release you from and against all Losses that we suffer or incur relating to:
- (a) a breach by us of the Agreement; or
 - (b) our acts or omissions or the acts or omissions of any of our Personnel.
18. Exclusion of implied terms
- Except to the extent that it would contravene any Law or cause this clause to be void or unenforceable, each party excludes all terms implied into the Agreement in fact, at law, by a Law or on any other basis.
19. Liability under the ACL
- 19.1 Subject to clause 19.2, if:
- (a) the ACL applies to the Services or the Deliverables; and
 - (b) you are a 'consumer' (as that term is defined in the ACL),
- our liability to you for Loss that you suffer or incur relating to our failure to comply with any consumer guarantee set out in the ACL is limited to (at our election):
- (c) in the case of the Services, the re-supply of the Services or the payment of the cost of having the Services supplied again; and
 - (d) in the case of the Deliverables:
 - (i) replacing those Deliverables;
 - (ii) supplying equivalent Deliverables;
 - (iii) repairing the Deliverables; or
 - (iv) paying the cost of replacing, acquiring equivalents of, or repairing the Deliverables.
- 19.2 Clause 19.1 will not apply if:
- (a) the Services or Deliverables are services or goods that are 'ordinarily acquired for personal, domestic or household use or consumption' (as that phrase is used in the ACL); or
 - (b) it is not 'fair or reasonable' (as that phrase is used in the ACL) for us to rely on such limitation.

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20. Liability for events beyond our reasonable control
- Subject to clause 21.3, we:
- (a) will not be liable for a breach of the Agreement to the extent the breach is caused by an event or circumstance that was beyond our reasonable control; and
 - (b) exclude all liability to you for Losses that you suffer or incur as a result of breach of the Agreement to the extent that those Losses are caused by an event or circumstances beyond our reasonable control.
21. General Liability
- 21.1 Subject to clauses 21.3 and 21.4 (as applicable), the maximum aggregate liability of each party under the Agreement is limited to the amount of the Service Fees which have been paid by you under the Agreement.
- 21.2 Subject to clauses 21.3 and 21.4, neither party is liable to the other party for any Excluded Loss.
- 21.3 Clauses 4.2, 4.12, 6.4, 7.2, 20, 21.1, 21.2 and 31.2 do not apply:
- (a) to our liability to you for Losses that you suffer or incur relating to our failure to comply with any consumer guarantee set out in the ACL; or
 - (b) to the extent that they would cause us to contravene a Law or cause the applicable clause to be void or unenforceable.
- 21.4 Clauses 21.1 and 21.2 do not apply to our liability for:
- (a) a breach of clauses 14 or 15;
 - (b) personal injury or death of a person caused by any of our or our Personnel's negligent acts or omissions; or
 - (c) criminal or fraudulent acts or omissions of us or our Personnel.
- 21.5 Nothing in the Agreement limits or restricts any general obligation of a party at law to mitigate against any Loss.
- 21.6 Each party's liability to the other in connection with the Agreement will be reduced proportionately to the extent that the other party or any of its Personnel caused that Loss.
22. Insurance
- 22.1 We must maintain:
- (a) a public liability insurance policy for an amount no less than \$20,000,000 per claim and in the aggregate; and
 - (b) a professional liability insurance policy for an amount no less than \$1,000,000 per claim and \$2,000,000 in the aggregate.
- 22.2 We must provide you with copies of the certificates of currency for the policies we are required to maintain under clause 22.1 if you request us to do so.
23. Termination
- 23.1 Either party may terminate the Agreement with immediate effect by giving the other party notice in writing if the other party:
- (a) commits a Material Breach, the Material Breach Process has been followed, and that Material Breach has not been remedied following the completion of the Material Breach Process; or
 - (b) suffers an Insolvency Event.
- 23.2 We may terminate the Agreement with immediate effect by giving you notice in writing if:
- (a) you fail to pay any amount that you are required to pay under the Agreement by the date which is 30 days after the due date for payment;
 - (b) any arrangements with the suppliers that we use to supply any of the Services or the Deliverables (including in relation to the Mirus Tools or the Content) are terminated for whatever reason; or
 - (c) there is an event or series of events beyond our reasonable control (including a change in Law) that prevents us from providing any of the Services or Deliverables to you.
- 23.3 Where a Letter of Engagement or an Order Form specifies a Service that includes a Mirus Tool, the Service Term will automatically extend for successive terms of one year unless and until a party gives a written notice of termination to the other party at least 60 days prior to the end of the Service Term.
- 23.4 In all other circumstances, either party can terminate the Agreement at any time after the Service Term by giving the other party 90 days prior written notice.
24. Consequences of termination or expiry
- 24.1 If the Agreement is terminated or expires:

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- (a) you must pay us all unpaid amounts for any Services or Deliverables supplied as at the date of termination or expiry;
- (b) you must cease, and ensure that all of your Personnel cease, using the Mirus Tools and the Content;
- (c) we shall continue to aggregate, retain and use the Aggregated Information aggregated during and after the Term for the purpose of tracking trends and benchmarking information unless you expressly request otherwise in writing;
- (d) we shall keep a copy of all historical data collected from or in relation to you, including Confidential Information and Relevant Information, unless you expressly request otherwise in writing or unless expressly prohibited by law;
- (e) you must return to us or destroy all of our Confidential Information that we have supplied to you in connection with the Agreement; and
- (f) if required by you, we must return to you a copy of your Confidential Information in our possession or control.
- 24.2 If the Agreement is terminated for any reason and you have paid any Service Fees in advance, you will not be entitled to any refund of those Service Fees.
- 24.3 The rights and obligations of the parties under the Agreement do not merge on completion of any transaction contemplated by the Agreement.
- 24.4 Except as expressly set out in the Agreement, any termination or expiry of the Agreement will not prejudice any right of action or remedy which may have accrued prior to that expiry or termination.
- 24.5 Any indemnity and obligation of confidence under the Agreement is independent and survives termination or expiry of the Agreement. Any other term by its nature intended to survive termination or expiry of the Agreement survives that termination or expiry, including clauses 1, 8, 9.1, 12.2, 12.3, 13, 14, 16.1, 16.3, 16.4, 16.7, 16.8, 17, 19, 24, 36 and 37.
25. Dispute resolution
- 25.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 25.
- 25.2 A party claiming that a dispute, difference or question arising in connection with the Agreement, including a question as to whether certain services are in scope or not, has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).
- 25.3 When a Dispute Notice is given, each party's contacts as specified in the Letter of Engagement or Order Form (or their nominee) must meet and first attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within 30 days (or longer period agreed by the parties), either party may commence court proceedings.
- 25.5 If a party breaches this clause 25, the other party need not comply with this clause.
- 25.6 Each party must pay its own costs of complying with this clause 25.
26. Notices
- 26.1 A notice, demand, consent, approval or communication under the Agreement (**Notice**) must be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) sent to the recipient's address specified in the Letter of Engagement or Order Form, as varied by any Notice given by the recipient to the sender.
- 26.2 A Notice given in accordance with clause 26.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
- (b) if sent by registered post, at 9.00 am on the sixth Business Day after the date of posting; and
- (c) if sent by email, an hour after the time the sender's information system recorded that the email left the sender's information system (*Electronic Transactions Act 2000 (NSW)*) unless, within one Business Day, the sender is informed that the email has not been received by the recipient,
- but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Commented [JK2]: Mirus may keep the historical data except in circumstances where it must destroy the data at law. We have worded this clause broadly rather than listing specific examples, for simplicity and also so the terms don't have to be repeatedly updated in response to changes in law. However, for your information and as an example of when you cannot retain the historical data - the APPs of the Privacy Act require Mirus as an "APP entity" to take reasonable steps to destroy historical data that is "personal information" or ensure it is de-identified if it no longer needs the information for any purpose for which it may be used or disclosed under the APPs (APP 11.2).

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27. Relationship between the parties
- 27.1 We are engaged as an independent contractor.
- 27.2 Neither party is an agent or representative of or has the authority to bind the other.
- 27.3 The Agreement is not intended and will not be taken to constitute a partnership, agency, employment, joint venture or fiduciary relationship between the parties.
28. Entire agreement
- 28.1 The Agreement is the entire agreement between the parties and supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between the parties in relation to its subject matter.
29. Variations
- 29.1 We may vary these General Terms from time to time by giving you a notice specifying the new General Terms or the applicable variations (**Variation Notice**).
- 29.2 If the variations specified in that Variation Notice do not reduce the scope of your rights, increase the scope of your obligations, or otherwise negatively impact your position under the General Terms, then:
- (a) those variations will take effect on and from the date which is 60 days after the date on which you received the Variation Notice or such later date as specified in the Variation Notice; and
- (b) you are deemed to have agreed to those variations.
- 29.3 Except as otherwise specified in the Agreement, any variations to the Agreement must be agreed in writing by you and us.
30. Assignment and novation
- 30.1 You must not transfer, assign or novate the Agreement without our prior written consent.
- 30.2 We may assign the Agreement to any person without your prior written consent.
- 30.3 If we request that you novate the Agreement to another person (including for example, as a result of a restructure or sale), you must do all things necessary to give effect to that novation, including executing all documents required to effect that novation.
31. Electronic communication
- 31.1 Each of us agrees that we may communicate with each other electronically. You acknowledge that electronic transmissions are inherently insecure, can be corrupted or intercepted, may not be delivered and may contain viruses.
- 31.2 Subject to clause 21.3, we exclude all liability for Losses that you suffer or incur in connection with the use of electronic communication.
32. Severability
- If any of the terms of the Agreement are not legally enforceable then that term or the relevant part of it will be either amended as appropriate to make it enforceable or ignored, but in all other respects the Agreement will have full effect.
33. Governing Law
- The Agreement is governed by the laws of the State of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that State and the courts having appeal from them.
34. Waiver
- 34.1 A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- 34.2 A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- 34.3 A waiver given by a party in accordance with clause 34.1:
- (a) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
- (b) does not preclude that party from enforcing or exercising any other right, remedy or power under the Agreement nor is it to be construed as a waiver of any other obligation or breach.
35. Counterparts
- A Letter of Engagement or Order Form may be executed in any number of counterparts. Each counterpart is deemed to be an original and all counterparts taken together constitute one document.

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36. Interpretation

- 36.1 In the Agreement, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, the Agreement, as amended from time to time in accordance with the Agreement;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (f) a reference to time is to time in Sydney, Australia;
 - (g) a reference to a party is to a party to the Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (i) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
 - (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement or any part of it.

36.2 Headings are for ease of reference only and do not affect interpretation.

37. Definitions

In the Agreement the following words have the meanings set out below unless the context requires otherwise:

ACL means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* or the corresponding provisions of the fair trading legislation.

Ad Hoc Service means a service that is not a Standard Service and which is described in a Statement of Work.

Aged Care Act means the *Aged Care Act 1997 (Cth)* and all associated subordinate legislation.

Aggregated Information has the meaning given to that term in clause 14.9(b).

Agreement has the meaning given to that term in clause 1.1.

Authorised User means a member of your Personnel described at clause 4.4 whose access has not been revoked or suspended pursuant to clause 4.11.

Baseline Quantity for a Fee Metric means the quantity of that Fee Metric specified in the applicable Letter of Engagement or Order Form, as updated in accordance with clause 11.5(c).

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales.

Confidential Information of a party means information that:

- (a) is designated by the Disclosing Party as confidential; or
- (b) which the Recipient knows, or ought to know, is confidential,

and which:

- (c) is disclosed to the Recipient whether before or after the date on which the Agreement commences; or
- (d) otherwise comes into the Recipient's possession, or of which the Recipient becomes aware, through the performance of the Agreement,

and, in our case, includes the Mirus Tools, the Login Details, the Content and the terms of the Agreement (including the Service Fees) and in your case, excludes the Aggregated Information.

Content means any material, information or other content that is accessible or made available to you through any of the Mirus Tools.

Deliverable means each item that is supplied in connection with the Services under the Agreement, including any items that are an output of the Services supplied relating to the Service (including the Mirus Tools or any output

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generated using the Mirus Tools), but excluding the Services themselves.

Disclosing Party means the party whose Confidential Information is disclosed to, otherwise comes into the possession of, or becomes known to, the other party.

Excluded Loss means:

- (a) any Loss of profits, revenue, anticipated savings, good will or reputation and/or opportunity;
- (b) any Loss or corruption of your data or systems and the costs of rekeying or restoring that data;
- (c) the cost of repair or replacement;
- (d) Losses suffered or incurred by you relating to sanctions imposed on a Facility;
- (e) any Loss suffered or incurred by you relating to a claim against you by a third party;
- (f) any Loss that cannot fairly and reasonably be considered to have arisen directly from the relevant event, circumstance or series of events or circumstances; and
- (g) any other indirect, consequential, incidental or special Loss.

Facility means each of your residential aged care facilities that you operate from time to time and to which we provide a Service.

Harmful Code means any computer code that is intended or known to be harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised disclosure or destruction or corruption of data including viruses, worms, spyware, adware, keyloggers, trojans, and any new types of programmed threats that may be classified.

Insolvency Event means any of the following events occurring in respect of a party:

- (a) that party is, or states that it is, insolvent or unable to pay its debts when they fall due, or is deemed insolvent or unable to pay its debts under any applicable Law;
- (b) an application or an order is made for the winding up or dissolution of that party;
- (c) a resolution for the winding up or dissolution of that party is passed or proposed;
- (d) that party is wound up or dissolved;
- (e) an application or an order is made for the appointment of a liquidator or a provisional liquidator in respect of that party;

- (f) an official manager, administrator, receiver, receiver and manager, other controller (as defined in the *Corporations Act 2001 (Cth)*), trustee in bankruptcy or any similar official is appointed to that party or any of its assets; or
- (g) that party takes any steps to obtain protection or is granted protection from its creditors under the laws of any applicable jurisdiction.

Intellectual Property Rights means all intellectual property rights and related rights, anywhere in the world, registered or unregistered, including the following rights:

- (a) patents, copyright (including software), rights in circuit layouts, registered designs, trademarks, know-how, inventions and the right to have Confidential Information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

Law means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction and includes any industry codes of conduct.

Letter of Engagement means a document executed by you and us in relation to our supply of one or more Service to you.

Losses means all liabilities, losses, damages, costs and expenses suffered or incurred by any person howsoever caused, whether arising in contract or tort (including negligence) or under any statute or under any other cause of action, and **Loss** has a corresponding meaning.

Material Breach means:

- (a) the Mirus Tools are not available for access by you for a continuous period of more than 14 days;
- (b) we are unable provide more than 65% of the Standard Services set out in the applicable Standard Service Schedule for a period of more than 30 days; or
- (c) either party breaches one or more of clauses 14, 15, or 16 of the Agreement and the effect of the breach or breaches is so substantial that it materially impacts the operations, reputation or future business of the other party.

Material Breach Process means the following:

- (a) Once a Material Breach has been identified, then:

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- (i) You must notify us of the Material Breach by sending an email to dispute@mirusaustralia.com setting out full details of the Material Breach and the proposed resolution; or
- (ii) We must notify you of the Material Breach by sending an email to the contact person specified in the Letter of Engagement or Order Form setting out full details of the Material Breach and the proposed resolution;

and either notice is a “**Material Breach Notice**”.

- (b) The receiving party is required confirm receipt of the Material Breach Notice within 14 days of the receipt of that notice and advise whether the Material Breach is capable of being remedied and, if so, what actions will be taken to remedy the Material Breach (“**Material Breach Remediation Actions**”).
- (c) The receiving party has 45 days from the date of the Material Breach Notice to undertake the Material Breach Remediation Actions.
- (d) If the parties agree that the Material Breach cannot be remedied, the Agreement terminates with effect from that date.
- (e) The parties shall act reasonably and in good faith in following the Material Breach Process and undertaking the Material Breach Remediation Actions.

Mirus Tool means each online tool, application or item of software that we give you access to as part of, or relating to, any of the Services.

Order Form means a document executed by you and us in relation to our supply of one or more Service to you.

Pass-through Expenses means expenses in the following categories:

- (a) travel and accommodation expenses;
- (b) document handling expenses (including printing expenses); and
- (c) other costs and expenses that we incur in supplying the Services and Deliverables which have not been included in the Service Fees.

Personnel for a person means the officers, employees, directors, contractors and professional advisors of that person or any other entity that forms part of that person's supply chain but excludes:

- (a) in your case, us and our 'Personnel'; and
- (b) in our case, you and your 'Personnel'.

Privacy Laws means the *Privacy Act 1988 (Cth)* and all associated regulations (including the Australian Privacy Principles) and any laws of any state or territory in Australia relating to the disclosure, use and handling of personal information or sensitive information relating to individuals.

Receiving Party means the party that receives, comes into possession of, or becomes aware of, Confidential Information of the other party.

Relevant Information means any information protected by the Privacy Laws or the Aged Care Act, including personal information and sensitive information (as those terms are defined in the *Privacy Act 1988 (Cth)*).

Service means the Standard Service(s) and/or Ad Hoc Service(s) specified in the applicable Letter of Engagement or Order Form.

Service Description for a Service means the terms relating to that Service in the relevant Letter of Engagement or Order Form, Standard Service Schedule and/or Statement of Work (as applicable).

Service Fees for a Service means the amounts specified in the Letter of Engagement or Order Form for that Service, as adjusted in accordance with clauses 10 and 11 where applicable.

Service Start Date for a Service means the date specified as the start of the Service Term in the applicable Letter of Engagement or Order Form or such other date agreed by the parties in writing.

Service Term means the period a Service will be provided, being the period specified in the applicable Letter of Engagement or Order Form as adjusted in accordance with clause 23.3 where applicable.

Standard Service means each collection of the services, tasks, activities and functions described in a Standard Service Schedule.

Standard Service Schedule means the contents of the Letter of Engagement or Order Form and any attachment to that Letter of Engagement or Order Form which set out the scope of the Standard Service(s), as updated by us from time to time.

Statement of Work means a document titled 'Statement of Work' that sets out the scope of the

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Ad Hoc Service(s) and is attached to the Letter of Engagement or Order Form.

Supplier IPR means any and all Intellectual Property Rights subsisting in:

- (a) the Services or the Deliverables or created as a result of us supplying the Services or Deliverables;
- (b) the electronic tools and systems (including the Mirus Tools and the Content spreadsheets, databases and software) which we develop, use or make available to you, relating to the Agreement; or
- (c) any enhancements or derivative works of any of the items listed in paragraphs (a) or (b).

Term has the meaning given to that term in clause 2.

We, us and **our** means Mirus Australia Pty Ltd as trustee for the Mirus Australia Unit Trust (ABN 12 332 619 396).

You and **your** means the entity specified in the Letter of Engagement or Order Form as the 'customer'.