

## Purpose

The Fred Wireless service is designed to provide a reliable wireless access for your business and staff devices (purchased upfront).

**i** If you subscribe to Fred Wireless as **Rental** service this agreement does not apply to you.

## Summary

### Customer Obligations

- The device cloud management and maintenance license remains the property of Fred. The license cannot be transferred, sold, leased, licensed, disposed of, or in any way altered, changed or enhanced without Fred's prior written approval.
- The device cloud management and maintenance license is provided for 5 years from the time the equipment is installed. After 5 years you can renew the agreement with Fred or continue to use your equipment without (without Fred support, cloud management and maintenance).
- The Equipment remains your property. However you will need to contact Fred to discuss any sale of the equipment, disposal or any alteration or change.
- The Customer will ensure their internet meets the requirements to provide a reliable service.

### Fred Obligations

- Fred IT Group Pty Ltd ABN 68 109 546 901 shall support and manage your wireless hardware and cloud management software for the duration of this Agreement for the purpose of provide Wireless (WiFi) access to your business network and the internet. This will be maintained in line with the information provided within this Service Level Agreement.
- Based on the information provided by you in respect of your business and our analysis of your requirements we will initially supply the Equipment described in your Quotation.
- In order to efficiently provide and maintain the Equipment, Fred reserves the right, in its discretion, to upgrade the management software to current releases.
- All updates to the equipment released by Xirrus during the Term will be applied.
- Fred will have access to, and provide Internet based remote management of the devices, including monitoring of summary logs and viewing device connectivity and wireless related alerts including:
  - Wireless device errors
  - Disconnected Wireless devices
  - DHCP Failures

### Service Conditions

- Fred will not provide administrative access to the Wireless devices for customers or third-parties.
- Fred Commitment Fred understands that Wireless networking is integral to your business. With this in mind, our maintenance and support of the equipment includes the following.

## Services

- Telephone & Remote Connection Support

Fred will provide telephone technical support and have remote monitoring to the wireless device(s) to ensure the service operates to meet the business requirements.

- Monitoring & Maintenance Support

Fred will monitor and respond to any critical alerts reported by the service's automatic notification process.

- On Site Support

Fred will provide onsite service in the event of a critical event or where remote access is unable to resolve an issue related to the equipment. On Site services will be quoted at Fred's standard rates.

## Equipment warranty and coverage

This agreement includes a standard back to base warranty in the case of faults. Faulty equipment is shipped back to Fred for assessment.

Items covered under this agreement are:

- Manufacturer standard warranty (Design or Factory Faults)
- Configuration Issues

Items not covered under this agreement are:

- Percussive / Mechanical damage (cracked casing or physically damaged)
- Fire
- Water Damage
- Theft

Any repairs not covered by this agreement will be charged to you at the manufacturer's repair cost price.

## Hours of Coverage

- Normal Business hours: 8.30am – 5pm Monday to Friday
- Telephone & Remote Connection Support: In line with standard Fred Help support hours
- Monitoring & Maintenance Support: 8.30am – 5pm Monday to Friday
- On Site Support: 8.30am – 5pm Monday to Friday

## Response Times

In the event of the need for a site visit to resolve a critical issue, Fred will aim to be on site within four normal business hours (see hours of coverage above) of the problem being reported to the on-site technical team.

## Non-Metropolitan Sites

Non-metropolitan sites are offered all services outlined above, with the exception of the response time being four normal business hours (see hours of coverage above) plus any required travel time to site from the nearest Fred office.

## Charges

There are no additional charges for the provision of services as outlined above for metropolitan sites (within 50 km radius of capital city GPO). Non-metropolitan sites will be charged travel and accommodation at the standard Fred rates where required.

## Detailed Contract Information

1. Ownership of Equipment

- a. You are the owner of the Equipment.
- b. For the purposes of this Agreement, Equipment includes all the hardware and software that we supply to you whether or not it is listed in your Quotation.

## 2. Entire Agreement

- a. The entire Agreement between you and us consists of this Service Level Agreement, the Quotation and the Direct Debit Request.
- b. This Agreement cannot be cancelled or terminated except in accordance with its terms.
- c. Any brochures and marketing material you may have seen are provided for your information only and do not form part of this Agreement.

## 3. Disclaimer of Warranties

- a. Upon delivery of the Equipment you must inspect it and satisfy yourself that it is in good operating order and condition.
- b. You must rely on your own judgment as to:
  - i. the quality and condition of the Equipment and its fitness and suitability for any particular purpose; and
  - ii. the performance of services provided by third parties.
- c. Subject to clauses 3(d) and 3(e) all warranties and conditions in any way relating to the Equipment and the provision of any services pursuant to this Agreement whether express or implied are expressly excluded to the extent that the goods and/or services are not of a kind ordinarily acquired by you as a consumer within the meaning of the Trade Practices Act 1974 or the Fair Trading Act 1999.
- d. Nothing in this Agreement shall unlawfully limit or exclude the benefit of any non-excludable conditions, warranties, rights and remedies in respect of the Equipment or the services provided by us conferred pursuant to the Trade Practices Act 1974 or the Fair Trading Act 1999.
- e. If we are liable for a breach of a condition or warranty implied by the Trade Practices Act 1974 or the Fair Trading Act 1999, our liability for the breach will, subject to the applicable Act, be limited to one of the following as determined by us:
  - i. in the case of goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or
  - ii. in the case of services: the supplying of the services again; or the payment of the cost of having the services supplied again.
- f. To the extent permitted by law we shall not be liable for any indirect or consequential damage, loss of income, loss of profit or interruption of business that you suffer, pay or otherwise incur and which arises out of or relates to this Agreement.
- g. No salesman or agent of the seller of the Equipment is authorised to change any term of this Agreement or to make any warranties or representations about it, oral or otherwise.

## 4. Term of Contract

Unless otherwise stated the Management and monitoring service is supplied as a 60 month term from the time the equipment is installed.

## 5. Payments

- a. You must pay to us the Total Payment shown in the Quotation in advance for the Full Term.
- b. If a Payment Date falls on a weekend or public holiday, payment is due on the next business day.
- c. Unless we otherwise agree, all payments must be made by direct debit from your bank account or credit card.
- d. All payments, once paid, are not refundable for any reason.
- e. You are unconditionally bound to pay all amounts due under this Agreement in full without set-off or counterclaim, and without any deduction in respect of taxes, unless prohibited by law, on any account whatsoever. This obligation continues no matter what happens, even if the Equipment is lost, stolen, damaged or destroyed, if it is defective or if you can no longer use it.

## 6. Use and Maintenance of Equipment

- a. You must keep the Equipment in good repair, condition and working order, normal fair wear and tear excepted.

- b. You must use, service and maintain the Equipment in accordance with the manufacturer's instructions and recommendations.
- c. You may modify the Equipment only with our written consent.
- d. You may use and continue to use the Equipment at the business address noted in your Quotation for the purpose stated in the Summary whilst this Agreement remains in place.

#### 7. Location and Inspection

- a. You agree to provide our authorised agents and us with reasonable access to inspect the Equipment to confirm its existence, condition and proper maintenance.
- b. If you fail to provide access to us and/or our authorised agents, we have the right, subject to compliance with any applicable law, to enter the premises or authorise our agents to enter the premises, where we believe the Equipment is located in order to confirm its existence, condition and proper maintenance.
- c. You are liable for and shall indemnify us (as a continuing indemnity) and hold us harmless against all damages, actions, suits, liabilities, penalties, claims and demands (including legal fees and expenses on a full indemnity basis) suffered, paid or otherwise incurred by us (including our authorised agents) in exercising our rights under clause 7(c).

#### 8. Payments Owed to us

- a. Time shall be of the essence in respect of the payment by you of amounts due to us.
- b. If you fail to pay any amounts due to us then we may by written notice immediately:
  - i. terminate this Agreement;
  - ii. institute legal action for recovery of all outstanding amounts and costs due to us or otherwise suffered, paid or incurred by us.

#### 9. Termination

This Agreement will terminate prior to the expiration of the Term upon the occurrence of any of the following events:

- a. if we give you a written notice under clause 8(b);
- b. if we terminate it in accordance with the general law; or
- c. if you suffer or become subject to an Insolvency Event.

#### 10. Assignments

- a. You may apply to transfer this Agreement to a third party but you acknowledge that we are not obliged to agree to this transfer. In the event that any party does not wish to continue the agreement an assessment will be made by us on the current value of the goods and a discharge fee will be incurred.

#### 11. Costs, Indemnities and Commissions

- a. You must pay or reimburse us for:
  - i. all taxes (including GST) and stamp duties payable in connection with this Agreement; and
  - ii. any expenses we reasonably incur in enforcing this Agreement or incur because you have repudiated, terminated or breached this Agreement including, without limitation, any legal costs and expenses, costs incurred in repossessing or attempting to repossess the Equipment and costs incurred in storing and disposing of the Equipment.
- b. You are liable for and shall indemnify us (as a continuing indemnity) and hold us harmless against all damages, actions, suits, liabilities, penalties, claims and demands (including legal fees and expenses on a full indemnity basis) for any loss, damage or injury to any person (including you) or property (including your property) that is suffered, paid or otherwise incurred by us (including our authorised agents) and that is caused by the Equipment or the use of the Equipment (whether by you or anyone else).
- c. You agree that we may pay commissions or fees to any broker, agent, dealer or other person who introduces you to us or us to you.

#### 12. Severability

- a. The Consumer Credit Code ("Code") or any other law would otherwise make a provision of this Agreement illegal, void or unenforceable in any jurisdiction; or

- b. A provision of this Agreement would otherwise contravene a requirement of the Code or impose an obligation or liability which is prohibited by the Code or any other law, this Agreement is to be read as if that provision were varied to the extent necessary to comply with the Code or that other law or, if necessary, omitted, without affecting the continued operation of the rest of this Agreement in that jurisdiction or any other jurisdiction.

### 13. Notices

- a. You must tell us if you change your bank account or credit card details, your business, postal or email address, or if you think there is any information that we should be aware of about your ability to comply with this Agreement.
- b. We can give you notice by delivering it to you personally or leaving it at, or sending it by post, facsimile or email to your home, business, postal or email address last known to us. An email notice shall be valid if not returned.
- c. A certificate signed by one of our authorised officers is adequate proof of the facts stated in it relating to this Agreement and rights and obligations arising under it in the absence of manifest error.
- d. You consent to us and our related bodies corporate sending commercial electronic messages to you.

### 14. Changes to these Terms and Conditions

- a. We may change these Terms and Conditions at any time by giving you not less than 30 days' notice.
- b. This notice may also be given to you by an advertisement in one or more newspapers circulating in your State or Territory.

### 15. Fees

- a. We reserve the right to charge fees for services we provide.
- b. Fees will be charged at our standard rates applicable from time to time.

### 16. Governing Law

- a. This Agreement is governed by the laws of the State of Victoria.
- b. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

### 17. Joint and Several Obligations

If "you" comprise more than one person then "you" means each of you separately and all of you jointly

### 18. Loss or Damage

- a. You assume and bear the risk of loss or damage to the Equipment. If the Equipment is lost or damaged you agree to replace or repair the Equipment at your cost.
- b. You agree to indemnify us (as a continuing indemnity) for any loss or damage to the Equipment.

### 19. Insurance

- a. You may at any time during the Term of the Agreement be required to produce documentary evidence suitable to our reasonable requirements that you have insured (including having paid the full premiums required by such insurer);
  - i. the Equipment against loss and all other normally insured risks for its full replacement value during the Term; and
  - ii. for public and products liability insurance for at least \$20 million (or such other amount as we reasonably consider necessary from time to time); which insurance policies must:
    - 1. have initial currency for at least 12 months and be maintained continuously throughout the Term and for a period of 1 year after the Agreement has ended;
    - 2. be endorsed by the insurer to ensure that we are noted as a named insured;
    - 3. waive all rights of subrogation against us;
    - 4. include a cross liability clause under which the insurer agrees that:
      - a. the term "Insured" in the policy applies to each person named in the policy as if a separate policy of insurance issued to each of them; and

- b. any non-disclosure for breach of policy conditions by one insured does not prejudice the right of the other insured to claim under any insurance.
  - 5. include a clause providing that the policy will not be brought into contribution with another policy of insurance covering the same risks.
- b. You must provide us with evidence that these policies of insurance are current and in existence if we ask for it.
- c. You must not do, or fail to do, anything which would allow the insurer to refuse or reduce a claim; nor can you enforce, conduct, settle or compromise any claim without our consent.
- d. You must not do, or fail to do, anything which would allow the insurer to refuse or reduce a claim; nor can you enforce, conduct, settle or compromise any claim without our consent.
- e. You must ensure that the amount under each policy of insurance taken out by you pursuant to this Agreement is increased to allow for any GST payable on receipt of a payment under the insurance policy so that the amount that would have been received had GST not been payable, is retained.

## 20. Incident Notification

If any Equipment is stolen or vandalised, you must promptly inform the police and promptly provide us with a copy of the policy report.

## 21. Basis of Settlement

- a. In our absolute discretion, we may:
  - i. repair the damaged Equipment;
  - ii. replace the stolen, lost or damaged Equipment with equipment of similar age, original specifications (excluding modifications) and condition, but this may not necessarily be the same make or model; or
  - iii. choose to release you from your future obligations under this Agreement except for any payments in arrears at the time the loss or damage claim is approved.
- b. We reserve the right to choose any suitably qualified repairer to carry out repairs or any suitable supplier to replace the Equipment.

## 22. GST

- a. If GST is or will be imposed on a supply made under or in connection with this Agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this document is not expressly stated to already include an amount in respect of GST on the supply
- b. The recovery by the supplier of any amount in respect of GST under this Agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.
- c. Subject to 26(a) costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

## 23. Dictionary

Insolvency Event means the occurrence of any one or more of the following events in relation to you:

- a. an order is made to appoint a liquidator or provisional liquidator;
- b. an order is made for your winding up or dissolution;
- c. an application is made to a court for an order described in paragraphs (a) or (b) of this definition and that application is not withdrawn or discharged within 21 days;
- d. a receiver, receiver and manager, liquidator, provisional liquidator or administrator is appointed (whether or not under an order);
- e. (being an individual) becoming bankrupt;
- f. entry by you into any arrangement, or compromise with, or assignment for, the benefit your creditors;
- g. (being a company) you become an insolvent under administration which for the purposes of this clause has the meaning it has in the Corporations Act 2001;
- h. you are unable to pay your debts other than a debt or claim the subject of a bona fide dispute;
- i. (being a company) as a result of the operation of section 459F(1) of the Corporations Act 2001 you are taken to have failed to comply with a statutory demand; or

- j. a notice is issued under section 601AA or 601AB of the Corporations Act 2001 and not withdrawn or dismissed within 21 days.