

Exhibit B
General Terms and Conditions

1. Definitions

Agreement: The Customer Purchase Agreement and all Exhibits there to.

Content: The images, graphics, and materials displayed on the Hardware.

Customer: The party identified in the Customer Purchase Agreement and includes any subsidiaries or affiliated entities in which the Customer has the power to direct or cause the direction of the management and policies and are designated in writing to Cirrus.

Customer Purchase Agreement: The Customer's initial and all subsequent purchase orders for Hardware, Software, and Services.

Installation Date: The date on which installation of the Hardware and/or Software is completed, as evidenced by a written notice from Customer to Cirrus. In the event Customer does not notify Cirrus of the Installation Date such Installation Date will be deemed to occur thirty (30) days from the date the Hardware and/or Software are delivered to Customer. Evidence of completion of installation of Hardware and/or Software for purposes of this Agreement shall be the successful completion of a test call through the system in a production environment.

Hardware: All Cirrus manufactured equipment purchased and delivered under this Agreement including, without limitation, the items specified on the Customer Purchase Agreement and all Cirrus installed parts, components, and related documentation including, but not limited to, manuals and training materials supplied by Cirrus to Customer, with the exception of any consumables.

Monthly Fee: Amount set forth on the Customer Purchase Agreement.

Products: The Hardware, Software, and Services, set forth on the Customer Purchase Agreement.

Services: Those services set forth in Section 2 of Exhibit B.

Shipment Date: The date on which Hardware is shipped from Cirrus's facility.

Software: Object code versions of the Software programs or applications listed in the Hardware and Price Summary and/or embedded or pre-loaded into Hardware, including, without limitation, Cirrus and/or third-party programs, applications, keys or code in firmware, hardware keys, ROM, PROM, EPROM, firmware, drivers and operating systems, or other media such as mobile drive, diskette or DVD/CD-ROM provided to Customer by Cirrus pursuant to this Agreement, and any upgrades or enhancements thereto.

Software Licenses: The terms and conditions of use for the Software, as set forth in the provisions of this Agreement or the applicable software publisher.

1. Price and Payment.

Prices for the Products shall be as specified on the Customer Purchase Agreement. Cirrus shall invoice Customer for the Products and other charges on a monthly basis, except as otherwise provided in the Customer Purchase Agreement.

- (1) Customer shall make payment in United States dollars via ACH transaction on a monthly basis in the amount of all Monthly Fees set forth on the Customer Purchase Agreement.
- (2) In the event the Customer purchases additional Services beyond those set forth on the Customer Purchase Agreement, such amounts shall be due and payable within thirty (30) days

of the completion of Services, unless ordered by Customer on a time, expense and/or material ("T&M") basis, which shall be due and payable upon issuance of invoice by Cirrus, subject to the payment of any deposit required by Cirrus to be paid.

- (3) Except as provided herein, there shall be no refund, rebate, or credit whatsoever for amounts paid or to be paid by Customer pursuant to this Agreement. Overdue payments. Any amount not paid when due shall be subject to a late charge of the greater of 5% or \$10 and shall thereafter be subject to a finance charge of one and a half percent (1.5%) for each month or fraction thereof that the invoice is overdue, or the highest interest rate permitted by applicable law, whichever is less. Customer shall reimburse Cirrus for its reasonable collection costs, including attorneys' fees and expenses, in the event of Cirrus exercises its rights and remedies against Customer pursuant to this Agreement or applicable law.
- (4) In the event Customer disputes any charge or invoice issued by Cirrus, Customer agrees to provide Cirrus with written notice within thirty (30) days from the date of the invoice. Customer's failure to provide written notice within such time shall be deemed a waiver of Customer's right to challenge such charges.

2. License Grant

Cirrus hereby grants to Customer a personal, non-exclusive, limited and non-transferable license ("License") to use the Software in accordance with the terms, conditions and restrictions set forth in this Agreement. This License is personal to Customer and is restricted to use with the Products consistent with the features and functions specified in the documentation provided by Cirrus. Customer may use the Products only for its internal business purposes and only as described in this Agreement or the applicable Product documentation. Any other use of the Products is strictly prohibited and will be deemed a breach of this Agreement.

Software Licenses governing non-Cirrus developed software shall be governed by the license terms of the applicable software publisher, which may be updated by Cirrus from time to time. Customer must certify in writing to Cirrus that all copies of such Software have been returned to Cirrus or destroyed within thirty (30) days after termination of Customer's right to use any Software. In the event of a Customer breach of its obligations under this Agreement, Cirrus or its third-party licensors shall be entitled to seek equitable relief including, but not limited to, preliminary and permanent injunctive relief, as well as money damages.

3. Ownership of Software

Title to the Software and all permitted copies of the Software (including, but not limited to scripts, changes, templates, or applications written as a post-closing service to Customer) in any form, and all intellectual property rights therein, including patents, copyrights, trade secrets, trademarks and other proprietary rights, remains vested exclusively in Cirrus or its third-party licensors, as applicable. Cirrus shall at all times be a third-party beneficiary with respect to the license rights granted to Cirrus by third-party licensors with respect to the Software. All rights not specifically granted to Customer under this Agreement are expressly reserved by Cirrus or its third-party licensors. To the extent Customer may gain any rights in the Software or underlying intellectual property beyond those rights expressly granted by this Agreement, Customer hereby assigns such rights to Cirrus and agrees to execute any further documentation that may be required to

preserve and protect Cirrus's (or its licensors') exclusive ownership interests in the Software and related intellectual property.

4. Unauthorized Use

(a) Customer will not, and will not permit any third party to (i) circumvent or attempt to circumvent any security device or licensing restriction contained in the Software or (ii) copy (except copies for back-up or archival purposes as provided herein), modify, adapt, merge with other software, translate, create a derivative work from, reverse engineer, decompile, disassemble, sublicense, lease, assign, loan, encumber, or rent the Software or use the Software for timesharing, subscription service or service bureau use, or attempt to use the Software in any manner that exceeds the scope of this Agreement. Customer may make up to two (2) copies of the Software solely for system back-up or archival purposes, provided that Customer reproduces all copyright, patent, trademark and restricted rights notices on all such copies. Customer shall not disclose, furnish or otherwise make the Software or the related documentation available to any third party. Cirrus may, upon reasonable advance notice and during normal business hours, directly or remotely inspect each site to verify Customer's compliance with this Agreement. Customer agrees to assist in providing such access.

In the event of nonpayment or material noncompliance by Customer with the restrictions and conditions on use relating to the Software, this Agreement may be terminated immediately by Cirrus and Customer shall immediately cease use of and return all Products and Software and related documentation to Cirrus at Customer's expense via a nationally recognized courier service. Customer's obligation to pay all accrued fees and charges will survive termination of the license rights granted hereunder, and Cirrus shall have, and does hereby reserve, all legal and equitable rights and remedies available under this Agreement and applicable law.

(b) **Content.** Customer agrees that it is solely responsible for the content transmitted, displayed or uploaded by Customer (the "Content") and for compliance with all laws pertaining to the Content, including, but not limited to, laws requiring Customer to obtain the consent of a third party to use the Content and to provide appropriate notices of third party rights. Customer represents and warrants that Customer has the right to upload the Content and that such use does not violate or infringe on any rights of any third party. Cirrus makes no representations or warranties regarding the suitability or lawfulness of any Content displayed by the Customer. Under no circumstances will Cirrus be liable in any way for any (a) Content that is transmitted or viewed while using the Products, (b) errors or omissions in the Content, or (c) any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to Content.

5. Order of Precedence

In the event a particular Software application is governed by a separate third-party license agreement, the following order of precedence shall apply: first, the separate license agreement and second, this Agreement.

6. Relationship of the Parties

The relationship between Cirrus and Customer at all times during the term of this Agreement shall be that of independent contractors. Employees and agents of Cirrus shall not be considered by either party to be agents or employees of Customer in any respect. Cirrus agrees to arrange directly with such employees and agents for salary and other compensation earned in connection with the subject matter and performance of this Agreement. Employees and agents of Customer shall not be considered by either party to be agents or employees of Cirrus in any respect. Customer agrees to arrange directly with such employees and agents for salary and other compensation earned in connection with the subject matter and performance of this Agreement.

7. Personnel

Cirrus has the sole right to determine the assignment of its personnel in the performance of this Agreement.

8. Maintenance, Title, Shipment, and Risk of Loss and Insurance

(a) Except to the extent included in the Services, Customer shall at all times during the term of this Agreement maintain the Products in good operating condition, normal wear and tear excepted.

(b) Unless otherwise specified, delivery of Products will be made free on board (FOB) the place or location of a Cirrus or Cirrus-specified facility from which Cirrus elects to make shipment. In the absence of specific instructions, Cirrus will select the carrier to whom delivery will be made for shipment to Customer. Title to the Products and the media upon which the Software is stored passes to Customer upon delivery to carrier. Insurance during shipment shall be the responsibility of Customer. Customer shall make all claims to the carrier for Products damaged or lost in transit. Cirrus will not be liable for delays in delivery due to causes beyond Cirrus's control including, but not limited to, inability to obtain material, labor or manufacturing facilities, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or delays of Cirrus suppliers. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Partial deliveries shall be accepted by Customer. Shipment will be made in accordance with the shipment dates specified in the Customer Purchase Agreement. Cirrus will package and ship the Hardware and Software in accordance with its commercial standards and may make multiple shipments with appropriate partial invoicing issued for each associated shipment. Customer bears all risk of loss to the Products, the partial or complete loss of which shall not relieve Customer of any of its payment obligations under this Agreement.

(a) For Software embedded in the Hardware or delivered by electronic means directly to Customer (including any subsidiaries or affiliates of Customer), Customer's right to exercise its Software Licenses hereunder shall arise at the location of the computer or device on which the Software and any documentation is first used by Customer. Delivery of the Software and documentation so supplied shall be deemed to occur where the download is completed.

(b) At all times during the term of this Agreement, Customer shall maintain all-risk property insurance on the Products in an amount not less than replacement value. Upon request, Customer shall provide a current certificate of insurance naming Cirrus and its assigns as loss payee.

9. Limited Warranty and Disclaimer of Warranties

(a) Except as otherwise specifically provided in separate product warranty statements provided by third party manufacturers of any product delivered by Cirrus in connection with its Products, which manufacturer warranties are hereby assigned and passed through to Customer, or as otherwise excluded from coverage on Schedule B.1, Cirrus warrants that the Cirrus Hardware shall be delivered in good condition and shall be free of defects in workmanship and material and shall operate substantially in accordance with stated functional specifications for a five (5) year period from delivery, provided that the Customer installs, tests and maintains the Hardware components in accordance with the applicable Installation Manual. The warranty exclusions set forth in any such Installation Manual shall apply to the limited warranties provided under this Agreement. The sole remedy for any breach of this limited warranty shall be the exchange and replacement of the defective system components in accordance with the component replacement process specified in the Installation Manual, which may be updated from time to time ("Hardware Warranty Period").

Cirrus warrants that the Software, when used properly, shall be free from reproducible defects and shall not materially vary from its published functional specifications during the term of the Hardware Warranty Period. Cirrus does not warrant that Customer's use of the Software or the Hardware will be uninterrupted or error-free or that the Software or the Products will meet Customer's particular requirements.

(b) In the event the Hardware is not as warranted, Cirrus will, at its option, repair or replace the defective Hardware or component or at its discretion refund the applicable purchase price. Customer must notify Cirrus if Hardware does not conform to these warranties before the expiration of the Hardware Warranty Period. All Hardware returns and exchanges shall be completed pursuant to the terms set forth in the Installation Manual.

(d) Any warranty services to be provided by Cirrus will be performed in a good and workmanlike manner and are warranted for a period of thirty (30) days from the date of completion.

(e) Repair and/or replacement services provided by Cirrus within the scope and duration of the original Hardware Warranty Period will be warranted for an additional period of three (3) months from the date of repair or replacement by Cirrus. Hardware provided by Cirrus may contain new and remanufactured parts that will provide performance equivalent to new parts.

(f) Warranty on OEM, alliance partner or other third-party products, as assigned by Cirrus to Customer, shall be limited to the warranty provisions of the OEM, suppliers or partner thereof. Where differences exist, the supplier, OEM or alliance partner warranty shall prevail.

(g) Except as expressly set forth in this Agreement, the Hardware and Software, and all related Services shall be provided "as is" without warranty of any kind, and Cirrus hereby disclaims, and Customer hereby waives, any and all warranties whether express, implied or statutory, including all implied warranties of merchantability, fitness for a particular purpose and non-infringement. Further, Cirrus does not warrant, guarantee, or make any representations that any Software provided will be free from all bugs or that its use will be uninterrupted or error-free. Customer understands and agrees that Cirrus is not responsible for and will have no liability for equipment hardware, software, or other items or any services provided by or manufactured by any persons other than Cirrus or its authorized agents. The foregoing constitutes Customer's sole rights and remedies under this agreement with respect to defects in the products, software or services.

(h) Customer understands and agrees that except for instances involving the Cirrus indemnification obligations expressly set forth herein, Cirrus's aggregate liability for any damages suffered by Customer or any other party, whether in contract, in tort, under any warranty theory, or otherwise, shall be limited to the amount paid to Cirrus by Customer under this Contract for the twelve (12) months preceding the incident giving rise to the indemnified losses or damages covered by this Agreement.

10. Confidentiality

For the purpose of this Agreement, "Confidential Information" shall mean the proprietary and confidential information embodied in the trade secrets and know-how of a party hereto, not generally known or available to the public including, but not limited to, business information relating to a party's financial information, products, technology, business development plans, product development plans, manufacturing information, business forecasts, customer lists, sales opportunities, business strategies, customer data and surveys, marketing plans, costs, pricing terms and strategy and the specific terms and conditions of this Agreement, regardless of the form (whether written, oral or electronic) in which it is disclosed. The parties contemplate that,

in the performance of this Agreement, either party may furnish the other Confidential Information which is generally related to the subject matter of this Agreement. The parties agree that such Confidential Information shall: (1) be held in strict confidence by the receiving party; (2) not be published in any form by the receiving party; (3) not be used by or relied upon by the receiving party for purposes other than those authorized under this Agreement; and (4) not be discussed with, disclosed or disseminated to any individual or organization, including subsidiaries and affiliates, other than the parties. These terms shall apply for a period of five (5) years from the termination, expiration or conclusion of this Agreement. The restrictions set forth in this provision shall not apply to information which the receiving party demonstrates: (a) is or becomes generally known in the trade through no fault of the receiving party; (b) is disclosed by the receiving party pursuant to judicial order, a requirement of a government agency, or by operation of law, provided the receiving party gives the disclosing party prompt prior written notice of such order so that the other party has the opportunity to prevent or restrict such an ordered disclosure; (c) is approved for release upon the disclosing party's prior written consent; or (d) is independently developed by the receiving party without reliance upon Confidential Information or breach of this Agreement. The receiving party will not remove any trademark, patent, copyright or other proprietary rights notice from any part of the Hardware, Software, documentation or ancillary materials of the other party. The receiving party will reproduce these notices on any and all copies of the documentation or ancillary materials made by the receiving party via specific permission from the other party. Unless otherwise provided herein, copies of documentation and ancillary material may be made solely for backup or archival purposes. In the event of a breach of the foregoing obligations of confidentiality, the non-breaching party shall be entitled to equitable relief including, but not limited to, preliminary and permanent injunctive relief, as well as money damages.

11. Spare Parts Availability

Cirrus will use commercially reasonable efforts to make spare parts or functional substitutes for Hardware available pursuant to the terms of this Agreement, whether for initial purchase or component exchange under the Hardware limited warranty provided herein.

12. Termination

(a) Termination by Reason of Bankruptcy or Similar Proceedings. Cirrus reserves the right to suspend all further performance of this Agreement until Customer provides adequate assurance of performance or rejects this Agreement pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision if any of the following circumstances occur: (1) proceedings under bankruptcy or insolvency laws are commenced by, or against, Customer and such proceedings are not dismissed within sixty (60) days of such commencement; (2) Customer is ordered or adjudged bankrupt; (3) Customer is placed in the hands of a receiver (or similar officer) and such receiver is not discharged within sixty (60) days; (4) Customer makes an assignment for the benefit of creditors or otherwise enters into any scheme or composition with its creditors; (5) Customer's assets are seized or attached in conjunction with any action against it by any third party; or (6) Customer is dissolved or seeks to terminate or otherwise cease its business operations. Any suspension of performance by Cirrus pending Customer's assumption or rejection will not affect Cirrus's rights to pursue or enforce any of the terms of this Agreement. In the event Customer rejects this Agreement pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, then this Agreement will be deemed terminated and Customer will promptly return all Products, Software and documentation to Cirrus. Neither suspension of Cirrus's performance nor termination of this Agreement will relieve Customer of any and all accrued fees or other payments due to Cirrus through the date of such suspension or termination nor affect any rights, duties or obligations of either party that accrue prior to the effective date of such suspension or termination.

(b) **Termination by Reason of Customer Default.** Cirrus may consider Customer to be in default of this Agreement if Customer fails to perform any of its obligations under this Agreement, or any other agreement between Customer and Cirrus or, as applicable, its assignee, unless such failure has been caused by an Excusable Delay. The failure to pay amounts when and as due shall not be excused by an Excusable Delay. Cirrus agrees to give Customer written notice of such default, and thereafter, Customer will have (i) five (5) business days following notice in the event of a payment default to cure such default and (ii) thirty (30) days following any other notice of default to cure such default. In the event that a Customer default delays Cirrus's performance under this Agreement, the time for Cirrus's performance shall be increased by the number of days of such delay. Each of the following shall be a Customer default: the leasing or subleasing of the Product by Customer; the removal of the Product from the premises to which it was delivered under this Agreement; the attachment of any lien or encumbrance arising by or through Customer other than Cirrus' security interest hereunder; a material adverse change affecting Customer or any guarantor of Customer's obligations hereunder ("Guarantor"), a change in control of or sale of substantially all of the assets of Customer or Guarantor and the death of Guarantor, if an individual.

(c) In the event of a Termination pursuant to Section 12(a) or (b) hereof, the due dates of all outstanding invoices and all remaining Monthly Fees shall become due and payable immediately, and Customer shall immediately cease use of and return all Hardware, Software and related documentation to Cirrus at Customer's expense via a nationally recognized courier service and Cirrus may immediately cease and terminate Customer's access to Cirrus' network and services.

(d) **Liquidated Damages.** The parties agree that if the Customer materially breaches its obligations under this Agreement (the "Customer Breach"), the Customer shall pay to Cirrus upon demand an amount equal to the sum of all Monthly Fees through the end of the Term (the "Liquidated Damages"). The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that Cirrus' harm caused by a Customer Breach would be impossible or very difficult to accurately estimate at the time of contract, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Customer Breach.

(e) Upon the occurrence of a Customer default, Cirrus may, without limiting any other remedy available under this Agreement, at law or in equity, peacefully enter upon the premises at which the Products are located and repossess the Products without court order and/or suspend or terminate all Services and Customer's right to use the Software.

13. Security Interest

Customer hereby grants Cirrus a security interest in all Products purchased hereunder together with all substitutions, replacements, accessions and all proceeds of the foregoing, including insurance proceeds, to secure Customer's payment obligations under this Agreement. Customer acknowledges that the security interest granted under this Section 14 is a purchase money security interest under New Hampshire law. Cirrus may file a financing statement for such security interest and Customer shall execute any such statements or other documentation necessary to perfect Cirrus' security interest in such Products.

14. Intellectual Property Indemnification

(a) If a third party brings suit against Customer claiming that Cirrus-manufactured Products or Cirrus-developed Software as provided to Customer infringes that party's United States intellectual property rights, including patents, copyrights or trade secrets, Cirrus will defend Customer against that claim at Cirrus's expense and will pay, subject to the limitations herein, all reasonable costs and any judgment, award or damages finally awarded by a court of competent jurisdiction, or any settlement entered into in good faith by Cirrus in any suit or proceeding provided that: (1) Customer promptly notifies Cirrus in writing of any such claim; (2) Cirrus has sole control of any such action or settlement negotiations (it being understood that Customer may participate in such action at Customer's own expense); and (3) Customer provides Cirrus full information and assistance to settle and/or defend any such claim, suit or proceeding and executes all necessary documentation.

(b) If it is judicially determined or if Cirrus believes it may be determined that the Cirrus-manufactured Products or Cirrus-developed Software provided hereunder infringe any third party's United States intellectual property rights, then Cirrus may, at its sole option and expense either: (1) procure for Customer the rights necessary to enable Customer to continue to use the affected Product or Software; (2) modify the Product or Software to make it non-infringing; or (3) replace the affected Product or Software with one that is at least functionally equivalent. If Cirrus determines that none of these alternatives is reasonably or economically feasible, Customer agrees to return the affected Product or Software to Cirrus upon Cirrus's written request. Cirrus will then refund an amount equal to Customer's unamortized portion of the affected Product or Software cost to Customer hereunder, based upon straight-line sixty (60) month depreciation commencing as of the date of Cirrus's shipment of the Product or Software to Customer. Cirrus will not be liable for any costs or expenses incurred by Customer without Cirrus's prior written authorization.

(c) Notwithstanding anything to the contrary in this Section, Cirrus will not be liable or have any obligation of defense or indemnification for any infringement to the extent the infringement claim is directed against open source technology incorporated in or provided with the Software, nor will Cirrus be liable or have any obligation of defense or indemnification for third-party closed source materials incorporated in the Software to the extent Cirrus is unable to extend any indemnity from such third-party licensor to Customer. The indemnification obligations set forth in this Section are conditioned upon Customer providing Cirrus with prompt written notice of each such claim, Cirrus having sole control of the defense of any such action (including settlement negotiations), and Customer's reasonable cooperation in defending any such action (for which Cirrus will pay Customer's reasonable, out-of-pocket expenses).

(d) Cirrus shall have no obligation or liability under this Intellectual Property Indemnification provision for, and Customer will indemnify, defend and hold harmless Cirrus and all of its officers, directors, employees, agents, successors and permitted assigns from any and all claims, demands, actions or threat of action (whether in law, equity or in an alternative proceeding), losses, liabilities, damages (including taxes),

and all related costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (collectively, "Losses"), and threatened Losses due to, arising from or related to an infringement claim based on any of the following: (1) use of the Products or Software in a manner other than as set forth in this Agreement and/or applicable documentation; (2) Customer's failure to incorporate the most recent version of the Product or Software and any related modifications, updates, substitutions, revisions, software, processes, methods, documentation or other Cirrus-recommended solution ("Solution") provided by Cirrus, provided such infringement would have been avoided by use of the most recent Solution as compared to the Product or Software actually being used; (3) Customer's modification of a Product or Software, or part thereof, unless such modification was made by or authorized by Cirrus; (4) the combination, operation, or use of a Product or Software with any products, data, or apparatus not provided by Cirrus; (5) infringement by a third-party Product or Software; (6) claims of infringement resulting from Cirrus's compliance with designs, plans or specifications furnished by or on behalf of Customer. If in dispute, Customer shall be required to demonstrate that the above limitations do not apply; or (7) claims arising out of any (i) Content that is transmitted or viewed while using the Products, (ii) errors or omissions in the Content, or (iii) any other losses or damages of any kind incurred as a result of the use of any Content by the Customer.

(f) With respect to this Indemnification section, if any such claim is made or threatened, in addition to the foregoing, Cirrus may, at its expense and option, either procure the right for Customer to continue using the Software, replace the same with a non-infringing software or modify the Software such that it is non-infringing, or shall be entitled to (upon its demand) the return of accused Software products from Customer, refunding any amounts paid for units that are so returned.

(g) Customer indemnification claims regarding products and software not of Cirrus's manufacture will be governed by the indemnification provisions provided by the manufacturer or supplier thereof, and Cirrus shall have no obligations regarding such indemnification claims.

(h) The provisions of this section 15-A state Cirrus's entire liability and obligation to Customer, and Customer's exclusive remedy with respect to the infringement by products and/or software of any patent, copyright, trade secret, trademark or other intellectual property right of any third party.

15. Limitation of Liability

Except for instances of intentional misconduct by a party, in no event shall either party be liable for any consequential, incidental, indirect, special, punitive or similar damages including, but not limited to, loss of goodwill, lost profits or revenue, business interruptions, or loss of business data, whether such loss or damage is based in contract, warranty, tort, negligence, strict liability, indemnity, or otherwise, and even if advised of the possibility of such damages.

16. No Responsibility for Customer Material

Cirrus shall not be responsible for any software, firmware, information, or memory data of Customer displayed on, contained in, stored on, or integrated with any Products at any time. Customer acknowledges and agrees it is Customer's obligation and responsibility to preserve any data on equipment prior to sending the equipment to Cirrus for repairs or other Services. Customer acknowledges and agrees that for Hardware returned to Cirrus, it is Customer's obligation and responsibility to ensure that any confidential, proprietary or otherwise sensitive information, including, without limitation, individually identifiable customer information about Customer's customers, stored on any Hardware returned to Cirrus is completely wiped and purged by Customer prior to delivery to Cirrus. Cirrus shall not be liable for any

such information remaining on Hardware returned by Customer. Customer will indemnify, defend and hold harmless Cirrus and all of its officers, directors, employees, agents, successors and permitted assigns from any and all claims, demands, actions or threat of action (whether in law, equity or in an alternative proceeding), losses, liabilities, damages (including taxes), and all related costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (collectively, "Losses"), and threatened Losses due to, arising from or related to Customer's failure to completely purge all such confidential, proprietary or sensitive information from the Hardware.

17. General Provisions

Order of Priority. In the event of any conflict within this Agreement, the following order of priority shall apply: (1) Customer Purchase Agreement, (2) General Terms and Conditions, and (3) Screen Subscription Terms.

Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntarily or by operation of law, without Cirrus's prior written consent. Cirrus may assign or otherwise transfer its rights, but not its obligations, under this Agreement in whole or in part to any third party ("Assignee"). Assignee's rights under this Agreement shall not be subject to any claims, defenses, or setoffs that Customer may have against Cirrus. This Agreement shall be binding upon and inure to the benefit of each party and their respective successors and permitted assigns.

Taxes. The purchase price for the Hardware, Software and Services does not include any federal, state, or local excise, sales, lease, service, rental, use, property, occupation, or other taxes, all of which (other than federal, state and local taxes based on Cirrus's income or net worth) will be paid by Customer except as exempt by law. Customer will provide Cirrus with a copy of its tax-exempt certificate if it is not obligated to pay such taxes. Cirrus will invoice Customer for the amount of such taxes (including any interest and penalties) and payment will be due by Customer within thirty (30) days of the date of invoice.

Force Majeure. The parties agree to notify each other if they become aware of any condition that may significantly delay performance hereunder and will agree to reasonable extensions of the schedule by executing a written Change Order. Under no circumstances shall either party be responsible for delays or lack of performance resulting from events beyond its reasonable control ("Excusable Delays"). Such events include, but are not limited to, acts of God, weather conditions, compliance with laws, governmental action, bid protests, terrorism, fire, strikes, lock-outs, labor disruptions, material shortages, riots, acts of war, and an Excusable Delay of a subcontractor; provided, however, that under no circumstances will a failure of any third party to make payment when due to either party herein be deemed an Excusable Delay.

Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.

Notices. All notices shall be sent via overnight courier, registered mail or confirmed facsimile transmission to the persons or addresses shown below, and shall be effective upon receipt or refusal.

If to Cirrus:

Cirrus Systems, Inc.
200 West Road
Portsmouth, New Hampshire 03801

If to Customer:

To the address set forth in the Customer Purchase Agreement.

Announcements. Neither party will issue a press release, advertisement or public statement concerning the existence of this Agreement without the express written consent of the other party. Customer and Cirrus agree to discuss in good faith the release of information necessary to support the marketing objectives of each party. Notwithstanding the foregoing, Cirrus may issue press statements naming Customer as a new Cirrus customer for the ordered Products, Software Licenses and/or Services.

Headings. Headings inserted in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement.

Dispute Resolution and Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Hampshire, U.S.A., excluding its conflict of law principles. Cirrus and Customer hereby consent to the non-exclusive jurisdiction and venue of the local, state and federal courts of New Hampshire; provided, however, that any dispute arising hereunder between them shall be first submitted by the parties to non-binding mediation and if such mediation does not successfully resolve such dispute, then the parties shall be free to exercise all available legal and equitable rights and remedies. Notwithstanding anything herein to the contrary, (i) either party shall be free to seek preliminary injunctive relief in a court of competent jurisdiction in order to protect its rights and interests prior to submitting any dispute hereunder to non-binding mediation; and (ii) Assignee shall not be obligated to submit any dispute to mediation. Customer hereby consents to the non-exclusive jurisdiction and venue of the state and federal courts in which Assignee is located. EACH OF THE PARTIES HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH THIS AGREEMENT.

Compliance with Laws. The parties agree that the obligations hereunder will be performed in strict compliance with all applicable national, federal, state and local laws, regulations and court orders. If any fines or other penalties are imposed on one of the parties because of

the other party's failure to comply with such laws, the non-compliant party will indemnify and hold the other harmless for any consequences of its noncompliance. Each party agrees that it will specifically comply with the following:

- (1) The export/re-export laws of the United States, as promulgated by the U.S. Department of Commerce;
- (2) Applicable export/re-export or import controls imposed by foreign countries; and
- (3) All applicable laws and regulations imposed by any competent authorities including, without limitation, the U.S. Department of Commerce, and any controls or regulations pursuant to the U.S. Foreign Corrupt Practices Act and the anti-boycott regulations of the U.S. Department of State.

Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed to constitute a waiver of such provision or of the right of such party to enforce each and every such provision.

Survival of Terms. The provisions of the Agreement that by their nature extend beyond the expiration date or other termination of the Agreement will survive and remain in effect until all obligations are satisfied.

Entire Agreement. This Agreement sets forth the entire understanding between the parties and supersedes all prior and contemporaneous discussions, understandings or agreements, whether oral or written, express or implied, regarding the subject matter herein. No provision of this Agreement shall be altered, amended, supplemented or waived except by written instrument executed by the authorized representatives of both parties.