



**Revised: 25 March 2020**

## **1 Interpretation**

1.1 In these Terms, the following definitions apply:

**“Additional Order Proposal”** means the written document produced by the Supplier as confirmation of acceptance of an Additional Services Request.

**“Additional Services Request”** means a request by the Customer in writing (in such form as is acceptable to the Supplier) for additional Services or Equipment.

**“Business Days”** means any day (other than a Saturday, Sunday or public holiday) when the banks are generally open for normal business in the city of London.

**“Charges”** means the charges payable by the Customer for the supply of Services and/or the Equipment as set out in the Order Proposal or Additional Order Proposal or as notified to the Customer in writing from time to time.

**“Confidential Information”** means any and all information, data and material of a technical or business nature or relating in any way to the business, products, services, customers and personnel of either Party which the other may receive or obtain in connection with the operation of the Contract or otherwise.

**“Contract”** means the contract between the Customer and the Supplier for the supply of Equipment and/or Services in accordance with these Terms.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**“Customer”** means the individual, firm, corporation or organisation recorded on the Order Proposal with whom the Supplier has contracted to provide the Services and/or the Equipment.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**“Deliverables”** means the deliverables set out in the Order Proposal or Additional Order Proposal, including but not limited to any designs, plans or samples.

**“Delivery Address”** means the location or Sites set out in the Order Proposal or Additional Order Proposal for the delivery of the Equipment.

**“Equipment”** means any equipment (whether software or hardware) to be provided by the Supplier to the Customer as set out in the Order Proposal or Additional Order Proposal.

**“Equipment Delivery Date”** means the date set out in the Order Proposal or Additional Order Proposal for delivery of any Equipment or, in the absence of such date, on the date communicated to the Customer by the Supplier in writing once the Equipment is ready for delivery.

**“Existing Services”** means those services utilised by the Customer (via a third party or otherwise) prior to the Services Commencement Date.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography



rights, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“Maintained Equipment”** means the items of Equipment which are to be subject to the Support Services as set out in the Order Proposal or Additional Order Proposal.

**“Minimum Term”** means a period of one year or the contract length defined in the proposal .

**“Order Proposal”** means the written document produced by the Supplier and signed by the Customer comprising of an order proposal and these Terms.

**“Parties”** means the Supplier and the Customer and a reference to a **“Party”** shall be a reference to each of them.

**“Professional Services”** means the installation of any Equipment by the Supplier at the Customer’s Sites, any staging services, configuration services, troubleshooting services, health check services or site surveys conducted by the Supplier in accordance with the Order Proposal or Additional Order Proposal or as agreed in writing between the Parties.

**“Recurring Charges”** means the recurring Charges in relation to the provision of the Services (excluding the Professional Services) by the Supplier.

**“Services”** means any of the WAAS Services, Support Services or Professional Services (including the Deliverables) to be provided by the Supplier under the Contract as specified in the Order Proposal or Additional Order Proposal.

**“Services Commencement Date”** means the date set out in the Order Proposal or Additional Order Proposal for the commencement of Services or, if no such date is present, the date upon which the Supplier notifies the Customer of the commencement of the Services.

**“Service Levels”** means the service levels applicable to the provision of the Support Services as attached to the Order Proposal.

**“Sites”** means any of the Customer’s premises, including, without limitation, premises where the Services are provided and/or where any Equipment, Maintained Equipment or other equipment is installed or supported by the Supplier as set out in the Order Proposal or Additional Order Proposal or otherwise as agreed in writing between the Parties.

**“Supplier”** means Ensign Communications Limited, a company registered in England and Wales with Company Number 05590654 and whose registered office is 10 Winchester Place, North Street, Poole, BH15 1NX

**“Support Services”** means the services provided by the Supplier to the Customer in relation to the maintenance of any Maintained Equipment and/or support services provided by the Supplier to the Customer in respect of the Equipment, Maintained Equipment and/or the System.

**“System”** means the Customer’s existing system including, without limitation, the Customer’s computer system and the hardware and software relating to or used upon or in connection with it.

**“Terms”** means these terms and conditions as amended from time to time in accordance with clause 24.

**“Third Party Provider”** means any third party with whom the Supplier contracts to enable it to provide the Services and/or the Equipment.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and



Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

“**VAT**” means value added tax chargeable under English law for the time being and any similar additional tax.

“**WAAS Services**” means the provision of wireless internet services (and Equipment where set out in the Order Proposal or Additional Order Proposal) known as “wireless as a service” provided by the Supplier to the Customer in accordance with the Order Proposal or Additional Order Proposal.

“**WAN Connectivity Services**” means the provision of wide area network connectivity services by the Supplier to the Customer in accordance with the Order Proposal or Additional Order Proposal.

- 1.2 Headings in these terms and conditions shall not affect their interpretation.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference in these Terms to writing or written includes email.
- 1.5 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.6 If there is any conflict or ambiguity between any of the clauses or terms of the Contract the conflict shall be resolved in accordance with the following order of precedence:
  - 1.6.1 these Terms;
  - 1.6.2 the Order Proposal and/or
  - 1.6.3 any Additional Order Proposals.

## **2 Basis of Contract**

- 2.1 An Order Proposal issued by the Supplier to the Customer shall not constitute an offer, and is only valid for a period of 30 days from the date of issue.
- 2.2 A signed Order Proposal returned to the Supplier by the Customer constitutes an offer by the Customer to purchase the Services and/or Equipment from the Supplier in accordance with these Terms.
- 2.3 The Order Proposal shall only be accepted following the Supplier issuing an Order Acknowledgement, at which point the Contract shall come into existence.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6 All of these Terms shall apply to the supply of both Equipment and Services except where application to one or the other is specified.



### **3 Commencement of Services**

- 3.1 The Services (excluding the Professional Services) shall be supplied from the Services Commencement Date for the Minimum Term.
- 3.2 Upon expiry of the Minimum Term, the Services shall continue to be supplied to the Customer until the Contract is terminated in accordance with clause 19.
- 3.3 Professional Services are also provided from the Services Commencement Date and they will be provided until they are completed.

### **4 Additional Services and Equipment**

- 4.1 The Customer may at any time during the term of the Contract issue an Additional Services Request to the Supplier in writing.
- 4.2 The Supplier shall be entitled to accept, through the issue of an Additional Order Proposal, or reject the Additional Services Request.
- 4.3 Each Additional Order Proposal shall, in relation to that Additional Order Proposal, have a new Services Commencement Date and Minimum Term as set out in the Additional Order Proposal.
- 4.4 Once issued by the Supplier, the Additional Order Proposal will be effective.
- 4.5 The Supplier shall supply the Services and/or the Equipment set out in the Additional Order Proposal in accordance with these Terms.

### **5 The Supplier's Obligations**

- 5.1 The Supplier shall provide the Services and, where relevant, the Equipment in accordance with the Order Proposal or Additional Order Proposal.
- 5.2 Where necessary, the Supplier or the Third Party Provider may carry out a survey to assess the Sites prior to the Services Commencement Date or on any such dates as to be agreed between the Parties to ensure the compatibility of the Site to enable the Supplier to deliver the Services.
- 5.3 The Supplier shall use its reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises or Sites that have been communicated to it.
- 5.4 The Supplier shall use all reasonable endeavours to meet any performance dates specified by it, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 5.5 Where the Supplier is providing Support Services, it shall use reasonable endeavours to meet the Service Levels.
- 5.6 The Supplier shall provide the Services with reasonable care and skill.
- 5.7 The Supplier reserves the right to amend the Order Proposal or Additional Order Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Equipment or Services, and the Supplier shall notify the Customer in any such event.



- 5.8 During the term of the Contract the Supplier shall maintain in force public/product liability insurance at an amount of not less than £10 million per annum and employers liability insurance at an amount of not less than £10 million per annum and shall provide to the Customer reasonable evidence of the same on request.

## **6 The Customer's Obligations**

6.1 The Customer shall at all times during the term of the Contract:

- 6.1.1 co-operate with the Supplier in all matters relating to the Services;
- 6.1.2 provide the Supplier, any Third Party Provider, its agents, subcontractors, consultants and employees with such rights and access to any Equipment, Maintained Equipment, Sites, records kept pursuant to the Contract, data and other facilities as reasonably required by the Supplier upon reasonable notice;
- 6.1.3 provide the Supplier with such information as the Supplier may reasonably request or require, including information relating to all Existing Services, and ensure that such information is accurate in all material respects;
- 6.1.4 co-operate fully with the Supplier's personnel in the diagnosis of any error or defect in the Equipment and/or Maintained Equipment, as reasonably requested by the Supplier;
- 6.1.5 provide, at its own expense, remote access (where necessary) to the Equipment and Maintained Equipment at all Sites;
- 6.1.6 procure the grant of all wayleaves and rights of way as are reasonably required by the Supplier or any Third Party Providers for the provision of the Services;
- 6.1.7 prepare and maintain the relevant Sites for the supply of the Services including providing, at its own expense, suitable accommodation, facilities, assistance for any Equipment and that all necessary power supplies, electrical and other fittings are in place and in working order;
- 6.1.8 ensure that all hardware and software comprising the System (other than any Equipment or Maintained Equipment) conforms to all applicable standards and law, including adequate approvals and licences that are necessary to enable the Customer to use the System;
- 6.1.9 ensure that no alterations, adaptations or modifications are made to any Equipment or Maintained Equipment in anyway nor permit any Equipment or Maintained Equipment to be combined with any other equipment, programs or software without the Supplier's prior written consent;
- 6.1.10 ensure that it takes all reasonable steps to keep any passwords issued by the Supplier pursuant to the provision of the Services private and confidential and to notify the Supplier immediately in writing or by telephone if such passwords become known to any other person;
- 6.1.11 ensure that the Services provided by the Supplier or any Third Party Supplier are used in accordance with all rules, limits or restrictions as communicated to the Customer by the Supplier from time to time and not used for any illegal, immoral or fraudulent purposes and that their use does not infringe upon the rights of any third party whether in contract, tort, warranty, or strict liability;
- 6.1.12 ensure that billing addresses, contact addresses and information which the Customer provides to the Supplier are accurate and up to date at all times.

6.2 The Customer is responsible for maintaining the security of any business process impacted by the use of the Services including, but not limited to, protecting all passwords, making back-up copies of all data, employing appropriate



security devices, including virus checking software, having disaster recovery processes in place and complying with all laws and regulations surrounding data protection.

- 6.3 Where the Customer becomes aware of any matters which the Customer knows or ought reasonably be expected to know constitute a threat to the security of the Customer and which may affect the Services, the Customer will immediately advise the Supplier in writing.
- 6.4 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 6.4.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 6.4.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6.4; and
- 6.4.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 6.5 The Customer shall not, without prior consent of the Supplier, at any time from the date of the Contract to the expiry of 12 months after termination or expiry of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

## 7 Equipment

- 7.1 Equipment specification is set out in the Order Proposal.
- 7.2 The Supplier shall use its reasonable endeavours to deliver the Equipment to the Delivery Address on the Equipment Delivery Date but time shall not be of the essence for the delivery of any Equipment.
- 7.3 Where the Customer is required by the Supplier to take delivery of Equipment, it shall do so within a maximum of 5 Business Days of the Supplier giving notice to it that the Equipment is ready for delivery.
- 7.4 The Supplier may deliver the Equipment by separate instalments. Each instalment shall be invoiced and paid for in accordance with the provisions of these Terms.
- 7.5 Risk in the Equipment shall pass to the Customer on delivery to the Customer at the Delivery Address.
- 7.6 Save in respect of Equipment delivered pursuant to the WAAS Services, title in Equipment shall not pass to the Customer until the Customer has paid the Supplier in full for any and all Equipment delivered to the Customer pursuant to all Order Proposals and/or Additional Order Proposals and until the title in the Equipment has passed to the Customer, the Customer shall:
- 7.6.1 insure the Equipment to its full reinstatement value with a reputable insurer and provide a copy of such insurance documentation to the Supplier if requested to do so in writing by the Supplier;
- 7.6.2 hold the Equipment on a fiduciary basis as the Supplier's or a third party owners bailee;
- 7.6.3 use the Equipment only in accordance with the manufacturers instructions; and



- 7.6.4 keep the Equipment separate from any other equipment and mark the Equipment as the property of the Supplier.
- 7.7 In respect of Equipment delivered pursuant to the WAAS Services, title in the Equipment shall not pass to the Customer at any time and the Customer shall at all times:
  - 7.7.1 insure the Equipment to its full reinstatement value with a reputable insurer and provide a copy of such insurance documentation to the Supplier if requested to do so in writing by the Supplier;
  - 7.7.2 hold the Equipment on a fiduciary basis as the Supplier's or a third party owners bailee;
  - 7.7.3 use the Equipment only in accordance with the manufacturers instructions; and
  - 7.7.4 mark the Equipment as the property of the Supplier and upon request inform the Supplier of the exact location of the Equipment.
- 7.8 Until title has passed to the Customer, the Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any Sites where the Equipment is or may be stored in order to inspect them, or, where the Customer's right to possession has terminated to recover them.
- 7.9 Equipment provided by the Supplier pursuant to the Contract is sold with the benefit of the manufacturers warranty only. The Supplier shall use its reasonable endeavours to assist the Customer with warranty claims against the relevant manufacturer and/or use its reasonable endeavours to assign the benefit of any manufacturer's warranty to the Customer. The Customer acknowledges that the Supplier provides no additional warranty in relation to any Equipment provided under the Contract.

## **8 Charges and Payment**

- 8.1 Unless otherwise set out in the Order Proposal or Additional Order Proposal:
  - 8.1.1 Annuity Services will be invoiced annually in advance.
  - 8.1.2 Professional Services will be invoiced on completion of the work. For projects spanning multiple months we may bill at the end of each month for work completed during that month.
  - 8.1.3 Equipment orders will be invoiced upon Order Acknowledgement and Equipment will not be shipped until full payment has been received by the Supplier. Where this is the first order received from the Customer payment of 50% of the invoice is required before the Supplier will order Equipment from a third party.
  - 8.1.4 Projects (which compose Equipment and Professional Services) will be invoiced at 40% of order value on Order Acknowledgement, 30% on delivery of the Equipment and 30% on completion of the project.
- 8.2 Charges in respect of the Services shall accrue from the Services Commencement Date.
- 8.3 Where the Supplier is engaged by the Customer to provide Professional Services only in respect of equipment to be supplied by the Customer or any other third party and is unable to perform those Professional Services on the Services Commencement Date due to matters beyond the control of the Supplier, including but not limited to suitability or condition of the Customer's/third party's equipment and/or Sites, the Supplier shall be entitled and shall invoice the Customer for 100% of the Charges attributable to those Professional Services (such invoice being immediately due and payable).
- 8.4 Invoices for the Charges will be sent to the Customer at the address specified in the Order Proposal or other such address as the Customer notifies the Supplier of in writing or email as the address to which invoices should be submitted for settlement.



- 8.5 Save in respect of invoices issued by the Supplier pursuant to clauses 8.1, 8.3, 17 and 18, the Customer shall pay all invoices within thirty days of the date of each invoice unless otherwise agreed with the Supplier in writing.
- 8.6 The Supplier shall be entitled to charge interest on all overdue amounts at the rate of 8% above the base rate of the Bank of England from time to time. Interest will accrue daily on overdue amounts from the due date of the invoice until the date of payment.
- 8.7 The Customer will not set-off or deduct any amount from any Charges due for payment.
- 8.8 The Supplier reserves the right to increase the Charges for any of the Services or the Equipment at any time up to 5 Business Days prior to the Services Commencement Date or Equipment Delivery Date (as applicable) that is due to:
- 8.8.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, supplier and/or other manufacturing costs);
- 8.8.2 any request by the Customer to change the terms of the Contract including but not limited to a change to the Services Commencement Date, a change to the Delivery Address or any alterations to the type or quantity of the Services or Equipment; or
- 8.8.3 any delay caused by any instruction of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.9 The Customer further acknowledges that any price increase made by a Third Party Provider for any of the Services may result in the Charges for that particular Service being increased at any time during the Contract. The Supplier will provide the Customer with written notice, where possible, 30 days prior to the increase of any Charges.
- 8.10 The Charges are exclusive of VAT which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 8.11 The Supplier reserves the right to increase the Charges as follows:
- 8.11.1 for any of the Services at any time during the Minimum Term (where the Minimum Term is more than one year) on an annual basis with effect from each anniversary of the Services Commencement Date in line with the percentage increase in CPI (or any other recognised index) in the preceding 12-month period and the first such increase shall take effect not before the first anniversary of the Services Commencement Date and shall be the latest available figure for the percentage increase in CPI (or the relevant recognised index); and
- 8.11.2 for any of the Services at any time after the expiry of the applicable Minimum Term on giving not less than 30 days written notice to the Customer.
- 8.12 Where the Supplier gives notice of an increase of Charges for any of the Services pursuant to clause 8.11 and such increase is not acceptable to the Customer, the Customer shall have the right, without limiting its other rights or remedies, to terminate only those Services affected by the increase of Charges by giving 30 days written notice to the Supplier within 7 days of the date of the Supplier's notice. If such notice is not given within 7 days of the Supplier's notice, the Customer will be deemed to have accepted the increase of Charges.
- 8.13 Where the Customer accepts an increase of Charges, or is deemed to accept an increase of Charges in accordance with clause 8.12, the increased Charges shall be applied to the affected Services from the date of the Customer's acceptance.





## **9 Suspension of Service**

- 9.1 The Supplier will suspend the Services without liability to the Customer with immediate effect upon the provision of written notice in the event that:
- 9.1.1 the Supplier reasonably believes that the Services are being used in an unauthorised or illegal manner;
  - 9.1.2 the Customer is in material breach of any of its obligations under the Contract;
  - 9.1.3 any regulatory body requires the Supplier to suspend the Services;
  - 9.1.4 the Customer fails to pay any of the Charges on the due date for payment;
  - 9.1.5 the Supplier needs to carry out scheduled updates, upgrades or maintenance to the Services;
  - 9.1.6 the Supplier, in cases of emergency, needs to carry out unscheduled maintenance to the Services.
- 9.2 Where the Supplier, in the Supplier's sole discretion, reinstates the Services following a suspension where the suspension arises pursuant to clause 9.1 as a result of the Customer's default, the Customer may be liable for an administration fee.

## **10 Third Party Providers**

The Customer agrees and acknowledges that in order for the Supplier to provide the Services to the Customer, the Supplier may have to enter into contracts with a Third Party Provider.

## **11 Intellectual Property Rights**

- 11.1 As between the Customer and the Supplier, all Intellectual Property Rights arising out of or in connection with the Services shall belong to the Supplier.
- 11.2 The Deliverables (including but not limited to all copyright, design, right and other Intellectual Property Rights in them) shall be the property of the Supplier and the Customer is not entitled to make any use of the Deliverables other than for the purpose of the Contract. The Supplier expressly forbids the Customer from producing or replicating in any way, part or all of any Deliverables provided by the Supplier to the Customer under the Contract.
- 11.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 11.4 The Customer shall keep the Supplier indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier as a result of or in connection with any claim brought against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the provision or performance of the Equipment and/or Services by the Supplier as a result of the Supplier following any drawing, design, specification or any other document or material supplied by the Customer.



## 12 Confidential Information

- 12.1 Each Party undertakes to the other that it will not disclose the terms of the Contract or divulge, cause or knowingly permit any third party to become aware of any Confidential Information provided that this clause 12.1 shall not restrict the disclosure of any Confidential Information to the extent that:
- 12.1.1 such disclosure is required by law or any judicial or regulatory authority;
  - 12.1.2 such information is or becomes (otherwise than by reason of a breach of this undertaking) within the public domain;
  - 12.1.3 subject to clause 12.2, such disclosure is necessary to enable either Party to perform or enforce any of its rights under the Contract.
- 12.2 Each Party shall be entitled to use the information received from the other for the purposes of the Contract only and shall not disclose such Confidential Information or any part thereof to any other person, firm or corporation except to its employees, agents or third parties to whom it is necessary for them to have access to it in order to perform the disclosing Party's contractual obligations provided that the entity to whom such disclosure is made receives and holds the Confidential Information on the same basis as it is held by the disclosing Party under the terms of the Contract.
- 12.3 This clause 12 shall survive termination of the Contract.

## 13 Data Protection

- 13.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 13, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 13.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 13.3 Without prejudice to the generality of clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 13.4 Without prejudice to the generality of clause 13.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 13.4.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - 13.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after



an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 13.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 13.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 13.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 13.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data.

13.5 The Customer consents to the Supplier appointing a third-party processor of personal data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement [substantially on that third party's standard terms of business **OR** incorporating terms which are substantially similar to those set out in this clause 13] and in either case which the Supplier [confirms **OR** undertakes] reflect and will continue to reflect the requirements of the Data Protection Legislation.

## 14 Limitation of Liability

- 14.1 Nothing in these Terms shall limit or exclude the liability of either Party for liability that cannot legally be limited, including liability for:
  - 14.1.1 death or personal injury resulting from negligence; or
  - 14.1.2 fraud or fraudulent misrepresentation.
- 14.2 Subject to clause 14.1:
  - 14.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; or any indirect or consequential loss arising under or in connection with the Contract; and
  - 14.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to a sum equal to the total Charges paid by the Customer under the Contract.



- 14.3 In addition to clause 14.2, the Supplier shall under no circumstances whatsoever be liable to the Customer in relation to:
- 14.3.1 any defect in equipment belonging to a third party, notwithstanding installation of such equipment by the Supplier;
  - 14.3.2 any costs, expenses or charges incurred or imposed by any existing third party provider of any Services to the Customer as a result of the transfer of the Services to the Supplier;
  - 14.3.3 the unsupervised integration of any Equipment with any third party equipment or software;
  - 14.3.4 any advice given or suggestions made by the Supplier to the Customer in connection with the provision of the Services; including, without limitation, advice in relation to the current market setting or market predications;
  - 14.3.5 interruption to the Services through installation, alteration, adjustment, repair, relocation, reinstallation, modification or re-configuration of the Equipment other than by the Supplier or its Third Party Provider's or with the Supplier's prior written consent; or
  - 14.3.6 interruption to the Services due to any accidental or wilful damage to or misuse of the Equipment or Services, abnormal working conditions or any failure to observe the Supplier's and/or the Third Party Provider's guidelines and recommendations.
- 14.4 The Customer acknowledges that the Services, Equipment and/or Maintained Equipment in general will not be uninterrupted or error free or that any access or service speeds cannot be guaranteed and agrees that the existence of such errors shall not constitute a breach of the Contract.
- 14.5 The Supplier has given commitments as to compliance of the Equipment and Services with relevant specifications in clause 5 and clause 7.8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3[, 4] and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

## 15 Assignment

- 15.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.2 The Supplier may assign, transfer, charge, mortgage, sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

## 16 Force Majeure

- 16.1 The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, non-performance or delayed performance by suppliers or subcontractors of the Supplier, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or the failure of any telecommunications providers or networks (**Force Majeure Event**).



## **17 Termination of Equipment Contract**

- 17.1 Without prejudice to any other rights or remedies which either Party may have, in relation to a Contract for the supply of Equipment, either Party may terminate the Contract in respect of the supply of Equipment by giving not less than 5 days written notice to the other, served in accordance with clause 23.
- 17.2 Where notice is given by the Customer and the Contract is terminated in respect of the supply of Equipment in accordance with clause 17.1, the Supplier shall be entitled to charge and shall invoice the Customer a restocking fee (such invoice to be immediately due and payable). The restocking fee will be based on the Equipment Charges and is dependant on the type of Equipment:
- 17.2.1 Equipment built to order – 100% of Equipment Charges
  - 17.2.2 All other Equipment – 25% of the Equipment Charges or the value of the third-party charges incurred by the Supplier, whichever is greater

## **18 Termination of Professional Services Contracts**

- 18.1 Without prejudice to any other rights or remedies which either Party may have, in relation to a Contract for the supply of Professional Services, either Party may terminate that Contract by giving notice to the other prior to the relevant Services Commencement Date, served in accordance with clause 23.
- 18.2 Where notice is given by the Customer and the Contract in respect of the provision of Professional Services is terminated in accordance with this clause 18, the Supplier shall be entitled to charge and shall invoice the Customer the following fees (such invoice to be immediately due and payable):
- 18.2.1 where the Contract for the provision of the Professional Services is cancelled within 14 days of the relevant Services Commencement Date, 50% of the Charges attributable to the Professional Services; or
  - 18.2.2 where the Contract for the provision of the Professional Services is cancelled within 24 hours of the relevant Services Commencement Date, 100% of the Charges attributable to the Professional Services.

## **19 Termination of Contracts with a Minimum Term**

Without prejudice to any other rights or remedies which either Party may have, in relation to a Contract for the provision of Services (excluding Professional Services) containing a Minimum Term, either Party may terminate the Contract by giving 90 days written notice to the other, served in accordance with clause 23, such notice to expire on the last day of the Minimum Term and thereafter to expire on any anniversary of the Services Commencement Date. For the avoidance of doubt, if notice to terminate is not given 90 days prior to the end of the Initial Term or subsequent anniversary of the Commencement Date the Agreement will automatically renew for twelve (12) months.

## **20 General Termination Provisions**

- 20.1 Without prejudice to any other rights or remedies which either Party may have, the Supplier may terminate any part of the Services provided pursuant to a Contract upon reasonable written notice to the Customer, without liability, in the event that the Supplier is unable to continue the provision of the Services without incurring additional expense if:
- 20.1.1 such part of the Services supplied by a Third Party Provider, whether directly to the Customer or to the Supplier, are discontinued for any reason whatsoever; or
  - 20.1.2 any of the Equipment becomes or is to become obsolete.



20.2 Without prejudice to any other rights or remedies which the Supplier may have, the Supplier may terminate the Contract immediately by written notice to the Customer if:

20.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment;

20.2.2 the Customer has committed a material breach of the Contract which is incapable of remedy;

20.2.3 the Customer commits a material breach of any of the terms of the Contract and fails to remedy that breach (if such breach is remediable) within 28 days of the Customer being notified in writing of the breach;

20.2.4 if the Customer has a receiver, liquidator or administrator appointed, is the subject of bankruptcy proceedings, ceases to trade, passes a resolution for or is the subject of a winding up order (except for the purpose of a solvent amalgamation or reconstruction), makes any composition or arrangement with creditors or is unable to pay debt as and when they fall due; or

20.2.5 the Services are being used by the Customer or any third party in an unauthorised or illegal manner.

20.3 On termination of the Contract for any reason:

20.3.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

20.3.2 the Customer shall within fourteen (14) days of such termination return all of the Equipment and Deliverables owned by the Supplier. If the Customer fails to do so, the Supplier may enter the Sites and take possession of them **OR** invoice the customer for the full value of the Equipment and a reasonable administration fee. Until they have been returned, the Customer shall be solely responsible for their safe keeping; and

20.3.3 On termination of the Contract (however arising), the clauses 6, 11, 12, 14, and 27 and 28 shall survive and continue in full force and effect.

20.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## 21 **No Partnership or Agency**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Parties, nor constitute any Party the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.

## 22 **Rights of Third Parties**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## 23 **Notices**

23.1 Notices served under the Contract shall be in writing and shall be delivered personally or by email to [accounts@ensign-net.co.uk](mailto:accounts@ensign-net.co.uk) or such other address as otherwise notified by either Party to the other in writing.



23.2 Notice given in accordance with clause 23.1 shall be deemed to have been given immediately if delivered personally or if given by e-mail prior to 4 pm on a working day and otherwise on the next working day.

## **24 Variation**

24.1 The Supplier may, upon the provision of one month's written notice to the Customer where possible, change the Services and these Terms, provided that such changes do not affect the nature or quality of the Services.

24.2 The Customer acknowledges that the Supplier may need to make changes to the Services in accordance with clause 24.1 as a result of any amendments to the regulatory framework governing the provision of the Services.

24.3 Except as expressly set out in these Terms, no variation to the Contract shall be effective unless it is agreed by the Supplier. At the Supplier's discretion, a variation of the Contract may be made through the creation of an additional document, in manuscript on the Order Proposal or via an Additional Order Proposal.

## **25 Waiver**

A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by either Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that right or remedy.

## **26 Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 26 shall not affect the validity and enforceability of the rest of the Contract.

## **27 Entire Agreement**

27.1 The Contract constitutes the entire agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

27.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

## **28 Governing Law and Jurisdiction**

28.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

28.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).



**IN WITNESS WHEREOF THIS AGREEMENT WAS DULY EXECUTED THE DAY  
AND YEAR FIRST STATED BELOW**

**Customer Name** .....

**Customer Contact** .....

**Customer Job Title** .....

**Date** .....

**Signature** .....

**Ensign**

**Contact** .....

**Job title** .....

**Date** .....

**Signature** .....