

## Part 1 - General Terms and Conditions for the Supply of Services

### 1. Definitions and Interpretation

1.1. In these Terms and Conditions, except where the context otherwise requires, the following definitions shall apply:

“Business Day” means a day, other than a Saturday or Sunday, when the banks are open for general business in the City of London;

“Charges” means the charges set out in the Contract;

“Customer” means the company which purchases the support services from the Service Provider, as specified in the Contract;

“Documentation” means any documentation describing any items, their configuration or licensing and warranty within the Services provided by the Service Provider to the Customer;

“Effective Date” means the date of the Contract;

“Initial Term” means the term specified as such in the Contract. The Initial Term shall commence on the Services Commencement Date;

“Licensed Materials” means any software and/or Documentation licensed to the Customer under the Contract;

“Party” means a party to the Contract and Parties shall be construed accordingly;

“Senior Representative” means the representatives authorised on behalf of the Service Provider and the Customer to negotiate any disputes between the Parties in accordance with Clause 15;

“Services” means the services to be provided by the Service Provider as detailed in the Services Specification;

“Services Commencement Date” means the date specified in the Contract from which the Services shall be provided;

“Service Provider” means Vysiion Ltd;

“Services Specification” means the specification of the support services to be provided by the Service Provider as detailed in the Contract; and

“Term” means the Initial Term and any extensions thereof.

1.2. As used in the Contract the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

1.3. Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

### 2. Provision of the Services

2.1. The Service Provider undertakes to provide the Services:

2.1.1 using its own initiative and based on its experience of providing services similar to the Services and without any encouragement, request or similar action on the part of the Customer;

2.1.2 in accordance with the Services Specification, the Service Level Contract and with all provisions of the Contract; and

2.1.3 in accordance with all applicable UK and European laws and regulations, using good quality materials, techniques and standards and with the degree of care, skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the provision of services similar to the Services.

### **3. Additional Services**

- 3.1. The Customer may from time to time request that the Service Provider supplies various additional services.
- 3.2. The Parties agree that any such additional services shall be documented by way of a separate Contract variation and shall be chargeable by the Service Provider on a time and materials basis in accordance with the rates specified in the Contract, if applicable. Where rates are not contained in the Contract or are not applicable then the applicable rates shall be advised by the Service Provider and detailed in the order issued by the Customer. Such rates shall be in all circumstances reasonable.
- 3.3. The scope of any additional services to be performed by the Service Provider shall be mutually agreed between the Parties but any estimate of the costs for performing such additional services provided by the Service Provider shall be construed as approximate and shall not be binding on the Service Provider.
- 3.4. If the Customer accepts the scope and charges of such additional services, Vysiion shall document the relevant addition or amendment to the Services and, following signature by both Parties, this shall constitute an agreed variation to the Services. Until and unless such variation is signed by both Parties all discussions, communications and clarifications between the Parties regarding such addition or amendment shall be treated as subject to contract and shall not create a binding obligations on the Parties. No additional services shall be carried out by the Service Provider except as directed by a duly signed Contract variation.
- 3.5. Any variation to the Services duly signed by both Parties shall form part of the Contract and shall be governed by the terms of the Contract.

### **4. Payment of the Charges**

- 4.1. In consideration of the supply of the Services in accordance with the terms of the Contract, the Customer shall pay the Charges in accordance with and subject to the payment terms specified in this Clause 4.
- 4.2. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable.
- 4.3. The Customer shall pay all sums owed to the Service Provider in full within 30 days of receipt of a valid invoice and without deduction, set-off or abatement.
- 4.4. Interest shall be payable on any late payments at the rate of 3% per annum above the London Interbank Offered Rate (LIBOR) from time to time in force.
- 4.5. The Service Provider shall be entitled to increase the Charges with effect from each anniversary of the Commencement Date in accordance with the percentage change in the Retail Price Index (all items excluding mortgage interest payments) ("RPIX") published by the Office for National Statistics (or such index as replaces the same) in the 12 months immediately preceding that anniversary. In the event that the application of the percentage change in RPIX would result in a reduction of the Charges, the Charges shall remain unchanged until the next anniversary of the Commencement Date.

### **5. Intellectual Property Rights and Intellectual Property Rights Infringement**

- 5.1. The Service Provider (and its licensors) shall at all times, both during and after the Term, retain ownership and all intellectual property rights in the Licensed Material, the Documentation, the Services and other intellectual property and the Customer acknowledges and agrees that it will at no time obtain any intellectual property rights in any of the same.
- 5.2. In the event that new inventions, designs or processes evolve in the performance of or as a result of the Contract, the Customer acknowledges that the same shall belong to the Service Provider unless otherwise expressly agreed in writing by the Service Provider.
- 5.3. The Customer shall indemnify the Service Provider fully against all liabilities of any

nature whatsoever, including (without limitation) all costs and expenses which the Service Provider may incur as a result of the Customer's infringement of any patent, trademark, trade names, copyright and all other intellectual property rights belonging to the Service Provider or any other proprietary right of any third party forming part of any activities or information provided by the Service Provider.

## **6. Warranties**

- 6.1. The Service Provider warrants and agrees that:
  - 6.1.1. the Services will materially perform the functions set out in the Services Specification; and
  - 6.1.2. it will provide the Services in accordance with the Service Level Contract.
- 6.2. Each Party warrants that it has full capacity and authority to enter into and to perform the Contract and that the Contract is executed by a duly authorised representative of such Party.
- 6.3. Except as expressly stated in this contract, all conditions, warranties, terms and undertakings, whether express or implied by statute, common law or otherwise are hereby excluded to the maximum extent permitted by law.

## **7. Amendments**

The terms of the Contract may only be amended if such amendment is in writing and signed by a duly authorised representative of each Party.

## **8. Insurance**

During the Term of this Contract, the Service Provider will maintain Public Liability insurance and all other insurances to the appropriate levels required by its obligations under this Contract.

## **9. Limitation of Liabilities**

- 9.1. Neither Party excludes or limits liability to the other for:
  - 9.1.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
  - 9.1.2. fraud or fraudulent misrepresentation; or
  - 9.1.3. any liability which may not be excluded or limited by law.
- 9.2. Subject always to Clause 9.1, the aggregate liability of each Party in respect of:
  - 9.2.1. all defaults resulting in direct loss of or damage to the tangible property of the other under the Contract shall in no event exceed the sum of £1,000,000;
  - 9.2.2. all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract shall in no event exceed an amount equal to the aggregate total of the Charges (as determined at the date on which the liability arises).
- 9.3. Nothing in the Contract shall limit either Party's obligation to pay any sums properly due in accordance with the Contract as and when they fall due for payment.
- 9.4. Subject always to Clause 9.1, in no event shall either Party be liable to the other for:
  - 9.4.1. indirect or consequential loss or damage; and/or
  - 9.4.2. loss or corruption of data; and/or
  - 9.4.3. loss of profits, business, revenue, goodwill or anticipated savings.
- 9.5. Except as otherwise expressly provided in the Contract, all remedies available to the Service Provider or to the Customer for any breach of the Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 9.6. Neither Party shall be liable for any breach of its obligations under the Contract to the

extent that such breach is caused by a failure or delay by the other Party in performing its obligations under the Contract provided and to the extent that the affected Party notifies the other Party of such failure or delay within 30 days of the affected Party becoming aware of its occurrence and of its likely impact.

## **10. Term and Termination**

- 10.1. The Contract shall remain in force for the Initial Term. Thereafter, the Contract shall be extended automatically for further periods of 12 months unless the Customer gives the Service Provider at least 30 days written notice before the expiry of the Initial Term or any extension thereof.
- 10.2. Without prejudice to any other rights that either Party may have under the Contract or at law, either Party may terminate the Contract immediately by written notice to the other if:
  - 10.2.1. the other Party commits a material breach of the Contract and, where such breach is capable of remedy, has not rectified the breach within 30 days of being advised in writing of the breach; and/or
  - 10.2.2. the other Party is unable to pay its debts as they become due, makes any voluntary arrangement with its creditors or becomes bankrupt, insolvent or the subject of a dissolution, administration order or has a receiver, manager or administrative receiver appointed over its assets or any part of its business or has a winding-up order made against it or goes into liquidation or if anything having a substantially similar effect to such events occurs.
- 10.3. Termination does not affect the obligation of the Customer to pay all sums due for all Services provided by the Service Provider prior to termination.
- 10.4. Notwithstanding anything to the contrary, in the event that the Customer terminates the Contract before the expiry of the Initial Term or any extension thereof other than as set out in clause 10.2 ("Early Termination"), the Customer acknowledges and agrees that it is responsible for payment to the Service Provider of:
  - 10.4.1. all Charges that have accrued up to and including the date of termination; plus
  - 10.4.2. all 3<sup>rd</sup> party Charges that have accrued up to and including the date of termination;The Customer also acknowledges and agrees that in the event of Early Termination it shall not be entitled to the reimbursement of any Charges paid by the Customer in advance of delivery of the Services by the Service Provider.
- 10.5. Upon termination of the Contract, howsoever caused, the Customer shall immediately stop all use of any Licensed Materials (if any) and use of the Services owned by the Service Provider and promptly return to the Service Provider (or at the Service Provider's option destroy and certify in writing to the Service Provider that it has destroyed) the original and all copies of any Licensed Materials, including but not limited to all archival copies, compilations, translations, partial copies, updates, and modifications, if any, and delete all copies of any such items from the Customer's computer hardware and any other hardware or storage facilities.

## **11. Suspension**

- 11.1. The Service Provider shall, at its sole discretion and without prejudice to any other rights or remedies available to the Service Provider, be entitled to suspend provision of all or part of the Services forthwith without liability in the event that:
  - 11.1.1. such suspension is for the purpose of carrying out scheduled or emergency maintenance provided that prior reasonable notice is given to the Customer; or
  - 11.1.2. the Customer fails to make any payment when due and fails to remedy the default within 14 days of a notice requiring remedy, until payment in full is received; or
  - 11.1.3. the Service Provider is entitled to terminate the Contract.
- 11.2. The Customer accepts that the Service Provider may suspend without liability any of

the Services immediately at the request of the relevant regulatory body if a service is the subject of a complaint or appears to be in breach of the applicable codes of practice.

**12. Title**

Title to any goods delivered as part of the Services shall pass to the Customer when payment for such deliverables has been made in full.

**13. Sub-contracting**

13.1. The Service Provider shall be entitled to sub-contract any of its obligations hereunder but this shall not affect the Service Provider's obligations to the Customer and any liabilities under the Contract.

13.2. The Service Provider shall be responsible for all work, acts, omissions and defaults of sub-contractors as fully as if they were work, acts, omissions or defaults of the Service Provider.

**14. Confidentiality**

Each Party agrees to keep the existence and terms of the Contract confidential and that all information, prices and data, of any nature, provided by one Party to the other hereunder shall remain the property of the disclosing Party and be treated as confidential by the recipient. Any such information, prices and data shall be used solely for the purpose for which it is supplied unless identified otherwise by the disclosing Party. The obligations of the Parties with respect to the non-disclosure and non-use of such confidential information shall not apply in relation to information already in the public domain or where such disclosure is otherwise required by a court of law or statute to be disclosed.

**15. Dispute Resolution**

15.1. If any dispute, difference or question arises in connection with the Contract the Parties shall enter in good faith into discussions to attempt to resolve such dispute as soon as possible. If such dispute, difference or question is not resolved within 14 days of being raised as a disputed matter the Parties shall escalate the dispute to their respective Senior Representative who will attempt to settle the dispute in good faith within 14 days of its escalation.

15.2. In the event that the Senior Representatives of the Parties do not settle the dispute within the allotted time, either Party may commence court proceedings or arbitration.

15.3. Notwithstanding clause 15.1, either Party may at any time apply to any court of competent jurisdiction for injunctive relief in the event of an alleged breach of the Contract or otherwise to prevent irreparable harm.

**16. Force Majeure**

16.1. Neither Party shall be liable to the other for failure to perform or delay in performing its obligations under the Contract if such failure results from circumstances beyond the Party's reasonable control including, but not limited to, any act of God, failure or shortage of power supplies, flood, lightning, fire, industrial disputes, act or omission of government, public telecommunications operators and other competent authorities, war, or civil disorder (an "Event of Force Majeure"). Each Party shall bear all of its own costs and expenses suffered or incurred due to such event.

16.2. The Customer shall not be liable to pay the Charges for any of the Services which the Service Provider is unable to perform during the circumstances set out in Clause 16.1.

16.3. If an Event of Force Majeure continues to prevent performance of the Contract for a period of 30 days, then the Party not subject to the Event of Force Majeure may terminate the Contract forthwith and without penalty. In such an event the Customer will pay all sums due for all Services provided by the Service Provider prior to termination.

**17. Notices**

17.1. All notices required or permitted under the Contract shall be in writing and shall be deemed to be given if delivered by hand, sent by first class prepaid post or by e-mail to

the address or e-mail address of an authorised representative of the other Party or such other address as may be subsequently notified to the other Party in writing in accordance with this Clause.

17.2. Any notice shall be deemed to have been served as follows:

17.2.1. if delivered by hand on a Business Day, at the time of delivery to the address of the recipient;

17.2.2. if sent by first class prepaid post, within 2 Business Days after the date of posting;

17.2.3. if sent by e-mail on a Business Day, on successful transmission by the sender or if not on a Business Day, on the next Business Day following successful transmission by the sender.

## **18. Non-solicitation**

The Customer shall not (without the written consent of the Service Provider) either directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Service Provider any person employed or engaged by the Service Provider in the provision of the Services at any time during the Term or for a period of 12 months immediately following the expiry or termination of the Contract other than by means of a national advertising campaign.

## **19. Severability**

The various provisions of the Contract are severable and if any provision or part thereof is held to be invalid or unenforceable by any court of competent jurisdiction then such invalidity or unenforceability shall be severed from the Contract and will not affect the validity or enforceability of the remaining provisions or parts thereof in the Contract.

## **20. Waiver**

20.1. The delay or failure of either Party to enforce any of its rights or remedies under the Contract shall not constitute a waiver thereof unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 17.

20.2. A waiver of a breach of any provision of the Contract shall not constitute a waiver of any subsequent breach of the same or of any other provision.

20.3. The rights of a Party under the Contract are cumulative and in addition to any other rights or remedies available to it at law or in equity.

## **21. Assignment**

The Customer shall not, without the prior written consent of the Service Provider, which shall not be unreasonably withheld, sell, assign, transfer or dispose of any or all of its rights or obligations hereunder.

## **22. Relationship of the Parties**

Nothing in the Contract shall create or be deemed to create a partnership, agency or joint venture between the Parties. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

## **23. Third Party**

A person who is not a Party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **24. Entire Contract**

The Contract constitutes the entire understanding between the Parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentations made by either Party.

**25. Law**

The Contract shall be governed by and construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the courts of England.

## Part 2 - Terms and Conditions for the Supply of IT Support Services

### 1. Definitions

- 1.1. In these Terms and Conditions, except where the context otherwise requires, the definitions set out in the General Terms and Conditions and those below shall apply:
  - “Service Provider’s Network” means the Service Provider’s host computers and network switches;
  - “Site” means the place or places, made available by the Customer, at which work is to be done by the Service Provider, as detailed in the Contract; and
  - “System” means the Customer equipment and software which is the subject of the Services.

### 2. Customer’s Obligations

- 2.1. Unless explicitly described as the Service Provider’s obligation under the Contract, the Customer shall:
  - 2.1.1. be solely responsible for the operation, supervision, management and control of the System during the Term and shall ensure that the System is used in a proper manner by appropriately trained staff;
  - 2.1.2. perform the operational maintenance routines specified in the System handbooks or as instructed by the Service Provider;
  - 2.1.3. maintain the environmental conditions for the System as specified by the equipment manufacturer in any System documentation or as instructed by the Service Provider.
- 2.2. Subject to the Customer’s operational requirements, the Customer shall provide the Service Provider with such full and free access as the Service Provider may reasonably require, to:
  - 2.2.1. the System at the appropriate Site;
  - 2.2.2. the appropriate Customer’s staff.
- 2.3. The Customer shall notify the Service Provider of any changes to the IT infrastructure, systems and services covered under the terms of the Contract that might affect the ability of the Service Provider to meet its obligations to the Customer.
- 2.4. The Customer at its own cost shall provide such telecommunication facilities as are reasonably required by the Service Provider for remote access testing and remote diagnostics.

### 3. Data Protection

- 3.1. The Customer warrants that it will at all times comply with the Data Protection Act 1998 and the Telecommunications Regulations 1999, and any amendments or replacements thereof, including any legislation implementing Directive 97/66/EC in relation to the services operated by the Customer which are the subject of this Contract.
- 3.2. The Service Provider shall ensure that the Customer’s data coming into its or its employees’ possession shall not be used for any purpose other than in connection with the provision of the Service.
- 3.3. The Service Provider will not disclose the Customer’s data, except:
  - 3.3.1. if it is necessary to do so in order to carry out its duties hereunder; or
  - 3.3.2. if it is necessary to do so in order to protect the Service Provider’s rights; or
  - 3.3.3. upon the demand of governmental or judicial authorities.
- 3.4. The Customer acknowledges that information may also be provided by the Service provider to third parties in order to fulfil orders or to provide support services on behalf of the Service Provider. The Service Provider will only provide necessary information to these third parties and these third parties are not permitted to use or distribute this



information for any purpose other than to provide the Services or any support service. The Service Provider shall make reasonable efforts to ensure that these third parties adhere to this policy.

- 3.5. The Customer agrees that during the term of this Contract, in respect of Customer data:
  - 3.5.1. that, subject to the terms of this Contract, the Customer shall determine the purposes for which and the manner in which personal data are, or will be, processed; and
  - 3.5.2. it is the data controller in respect of all personal data the Service Provider may process; and
  - 3.5.3. it consents to the Service Provider processing the Customer's data and sending such data to affiliated companies of the Service Provider within the European Union.
- 3.6. The Service Provider agrees that, with the Customer's express consent, the Service Provider is the data processor in respect of the personal data provided by the Customer and processed by the Service Provider, during the term of the Contract.
- 3.7. The Customer agrees that the Service Provider or its authorised representative may put the Customer's name and other information obtained about it from the proposal and sales process into a computerised directory for internal use only, until the Service Provider or its authorised representative receives specific written instructions to the contrary from the Customer.
- 3.8. The Service Provider accepts no responsibility for the loss or damage of data, due to hardware failure, file degradation, file damage, Customer misuse or accidental deletion.

#### 4. Remote Monitoring Service

- 4.1. The Services include the provision of a Remote Monitoring Service comprising Server Monitoring Services and, where specified in the Contract, Workstation Monitoring Services (both as described below). The Remote Monitoring Service includes:
  - 4.1.1. 24 x 7 x 365 monitoring for alerts generated by the monitoring service;
  - 4.1.2. notification to the Customer of detected alerts; and
  - 4.1.3. where specified in the Contract, fault rectification in accordance with the relevant provisions of the Service Level Agreement.
- 4.2. The Customer shall provide all correctly completed documentation required by the Service Provider to correctly implement the Remote Monitoring Service.
- 4.3. Unless specified in the contract, the Remote Monitoring Service does not include Customer equipment or Customer software maintenance, equipment replacement, software upgrades, or technical assistance for problem resolution.
- 4.4. **Server Monitoring Service**
  - 4.4.1. The Service Provider will provide the Server Monitoring Service for the number of servers specified in the Contract as covered by such Services. The Server Monitoring Service includes:
    - 4.4.1.1. provision and remote installation of a monitoring agent; and
    - 4.4.1.2. configuration of the monitoring agent in accordance with a predefined set of incidents.
- 4.5. **Workstation Monitoring Service**
  - 4.5.1. The Service Provider will provide the Workstation Monitoring Service for the number of devices specified in the Contract as covered by such Service. The Workstation Monitoring Service includes:
    - 4.5.1.1. provision and remote installation of a monitoring agent; and
    - 4.5.1.2. configuration of monitoring agent in accordance with predefined set of incidents.

**5. Extent of Servicing Obligations**

- 5.1. The Service Provider shall use its reasonable endeavours to provide prompt and continuing Services but will not be liable for any loss of profit or loss of data resulting from ISP outages, or service interruptions caused by events beyond the control of the Service Provider or outside the Service Provider's Network, or due to errors or omissions of the Customer.
- 5.2. The Service Provider shall not be responsible for what occurs at the ISP, or if an operator's telephone network is non-operational.
- 5.3. From time to time certain servers, or the whole or part of the Service Provider's Network used by the Service Provider to provide the Services may be closed down for routine repair or maintenance work. The Service Provider or its authorised representative shall give as much notice as in the circumstances is reasonable (ideally a minimum of 48 hours) and the Service Provider shall endeavour to carry out such works during the scheduled maintenance periods as published by the Service Provider from time to time.
- 5.4. The Service Provider may exercise its right not to perform the Services and/or to charge the Customer for the Service Provider's time and material expenditure, reasonably incurred, if:
  - 5.4.1. on arrival at the appropriate Site or upon connection to the appropriate Site (via remote access), the Service Provider's service engineer finds that sufficient and proper access to the System and/or the recommended environmental conditions are not provided; or
  - 5.4.2. the Customer has not been performing its obligations (in accordance with Clause 2); or
  - 5.4.3. following receipt of a fault call, the fault call is found to be unwarranted due to a user error or the fault not being in the System.
- 5.5. The Services are provided subject to:
  - 5.5.1. the proper use of the System by the Customer and its personnel, agents and sub-contractors;
  - 5.5.2. the System not being modified in any way without the Service Provider's prior approval;
  - 5.5.3. the Customer not being in default of its obligations under the Contract.

**6. Security**

The Service Provider reserves the right to alter security measures, including passwords, for the Services at any time and to advise the Customer of these changes as soon as it is able.

**7. Licensed Materials**

- 7.1. If the Service Provider supplies software to enable the Customer to connect to the Service Provider's Network, the Service Provider hereby grants to the Customer a non-exclusive license to use the Licensed Materials as permitted herein.
- 7.2. The Customer may use the software to connect to the Service Provider's Network and use the software in the manner for which it was designed and make copies of the software for the purpose of backup only. The Customer may not sell, assign, transfer, lease, grant licenses over or distribute the software to third parties without the written permission of Service Provider for which a fee maybe payable.

**8. Additional Warranties**

- 8.1. The Customer warrants and agrees that it will:
  - 8.1.1. ensure that the Services and the Service Provider's Network are not used to store any unlawful, harassing, libellous, obscene, tortious, or otherwise objectionable content, or content that infringes or may infringe the intellectual property rights or other rights of any third party and shall ensure that it is at all times only used in accordance with all applicable laws and advertising

practices;

- 8.1.2. comply with any data protection legislation or other law, regulation or order which may be applicable to the use of the Services by the Customer;
  - 8.1.3. use the Services only for its own internal business purposes and will not operate it on behalf of any third party or permit access and use by any person other than an authorised representative of the Customer;
  - 8.1.4. use all reasonable endeavours to ensure that it does not import any virus into the Service Provider's Network.
- 8.2. The Customer acknowledges that the Service Provider is unable to exercise control over the content of information passing over the Service Provider's Network or via the Services, and the Service Provider hereby excludes all liability of any kind for the transmission or reception of infringing information of whatever nature.
- 8.3. The Service Provider specifically excludes any warranty:
- 8.3.1. as to the accuracy of information transmitted through the Services; or
  - 8.3.2. that the Services are or shall be fit for the purpose of the Customer.

## 9. Indemnity

- 9.1. The Customer shall indemnify, defend, and hold harmless the Service Provider from and against all liabilities, damages, and costs (including settlement costs and reasonable legal fees) arising out of any claim by a third party against the Service Provider regarding Customer data, or the Customers' use of the Services in violation of the Contract and the Customer undertakes to ensure that all persons authorised by the Customer to use the Services operate it in an appropriate way.
- 9.2. The Customer acknowledges that content of messages must be strictly controlled so as not to give rise to legal consequences, and that from time to time the Service Provider may issue notices in this regard.
- 9.3. The Customer is also responsible for, and shall indemnify the Service Provider against, any liability arising from:
- 9.3.1. the Customer failing to ensure that it is running services which fully comply with any of the applicable codes of practice and the rules of the relevant regulatory body and any relevant legal obligations;
  - 9.3.2. the Customer failing to provide the Service Provider with full descriptions of their service, including marketing details.

## Annex A: Data Backup Service

### 1. Definitions

- 1.1. In these Terms and Conditions, except where the context otherwise requires, the definitions set out below shall apply:
- “Asigra” means Asigra Inc. whose registered office is 1120 Finch Avenue West, Suite 400, Toronto, Ontario, Canada M3J 3H7;
- “Data Backup Service” means the automatic and remote encrypted data backup service to be provided by the Service Provider to the Customer as referred to in the Contract that provides the Customer with the right to electronically transmit and store computer data using either a private data communications network or the internet into a data storage location maintained by the Service Provider;
- “Devices” means the agreed Customer servers, workstations, portable or mobile devices and / or other devices on which the Product is installed for the Customer's users;
- “Encryption Key” means the code provided by the Service Provider to the Customer to enable the Customer to access the data stored by the Service Provider on behalf of the Customer pursuant to the Service;

“Product” means the data backup software and remote monitoring software, including any updates and new releases, used for the purpose of conducting monitoring, reporting and implementing automated data backups of the Customer’s System;

“Software” means the Asigra software, including any updates and new releases, supplied by the Service Provider to the Customer to enable the Service Provider to provide the Service; and

“Software Licence Agreement” means Asigra’s standard click through software licence agreement to be accepted by the Customer on installation of the Software.

## 2. Data Backup Service

- 2.1. The Customer or, if included in the Service, the Service Provider will install the software necessary to provide the Data Backup Service on the Customer’s workstations and servers. Such installation may be carried out on a device by device basis or by using an automated log-in script.
- 2.2. The Customer is required to provide internet access to allow operation of the Data Backup Service.
- 2.3. Customer data which is the subject of the Data Backup Service will be stored at an ISO27001 accredited secure datacentre in the UK or, where specified in the Contract, on a local storage device provided by the Customer.
- 2.4. The Customer shall be solely responsible for:
  - 2.4.1. retaining and maintaining the security of any password supplied by the Service Provider for the use of the Services; and
  - 2.4.2. all access and use of the Services made via the Customer’s account and using its Encryption Keys; and the Customer further acknowledges that if it loses its Encryption Keys, due to the nature of the security required for the Data Backup Service, it will not be possible for the Service Provider to supply any replacement Encryption Keys and therefore the Customer’s data stored pursuant to the Data Backup Service will be inaccessible to the Customer.
- 2.5. If Encryption Keys are lost rendering the Customer’s data inaccessible, the Service Provider reserves the right to delete the Customer’s data stored using the Data Backup Service at the Service Provider’s datacentre.
- 2.6. The Customer acknowledges and agrees that in the event that the Product comprises, in whole or in part, the Software, the Software shall be operated by the Customer pursuant to the terms of the Software Licence Agreement and the Software Licence Agreement shall also constitute terms and conditions for the supply of the Services under the Contract.
- 2.7. Unless included in the Service, the Customer will set up and configure the Data Backup software to implement the data backup regime across all Devices on a frequency based on the protection needs of the various types of Customer data.
- 2.8. Backup data may be restored to specific locations, either:
  - 2.8.1. by the Service Provider, if included in the Service; or
  - 2.8.2. on demand by the Service Provider at the Charges detailed in the contract; or
  - 2.8.3. by the Customer through a self-service portal.
- 2.9. In the event that a scheduled data backup fails, the Service Provider is alerted by the Data Backup Service software and will access the Customer’s server equipment remotely to resolve the issue. On resolution of the issue, the Service Provider will run the data backup again to confirm that the issue has been resolved successfully.
- 2.10. The Service Provider is not required to restore a failed service as part of the Data Backup Service.

## Part 3 - Terms and Conditions for the Supply of Communications Support Services

### 1. Definitions

- 1.1. In these Terms and Conditions, except where the context otherwise requires, the definitions set out in the General Terms and Conditions and those below shall apply:
- “Fault” means an abnormal condition or defect which prevents the System from operating in accordance with its operating manuals or specifications issued by the System’s manufacturer or supplier;
- “Help Desk” means the Service Provider’s main contact point for service related incidents and general support;
- “Offshore Site” means that part of the Site (if applicable), where work is performed offshore;
- “Site” means the place or places, made available by the Customer, at which work is to be done by the Service Provider, as detailed in the Contract;
- “Spares Holding” means those spares purchased by the Customer from the Service Provider which are held exclusively for use in rectifying Faults in the System; and
- “Support Services” means the services to be provided by the Service Provider as detailed in the Contract.

### 2. The Support Services

- 2.1. The Service Provider shall use its reasonable endeavours to perform the Support Services in accordance with the timescales detailed in the Services Level Agreement set out in the Services Specification.
- 2.2. The Support Services shall include:
- 2.2.1. Help Desk to log System Faults or requests for support as follows:
- 2.2.1.1. The Customer may log a request for support or report a Fault on the Help Desk telephone number detailed in the Form of Contract;
- 2.2.1.2. The Help Desk will be available at the times detailed in the Form of Contract;
- 2.2.1.3. All reported Faults shall be categorised by the Service Provider as specified in the Services Specification;
- 2.2.1.4. The Service Provider shall provide the Customer with such technical advice by telephone as shall be reasonably necessary to resolve the Customer’s difficulties and queries in using, managing, administering and maintaining the System.
- 2.2.2. Rectification of System Faults:
- 2.2.2.1. When logging System Faults with the Help Desk, the Customer shall supply a description of the Fault and the circumstances in which the Fault arose;
- 2.2.2.2. Where the Service Provider discovers or otherwise becomes aware of a Fault, either by carrying out preventative maintenance or otherwise, the Service Provider will notify the Customer of such Faults and will initiate a Fault correction process
- 2.2.2.3. When purchased by the Customer under the Contract or by separate order, the Service Provider shall maintain a minimum Spares Holding appropriate to the System. Items forming part of the Spares Holding shall be used by the Service Provider solely for the rectification of Faults and shall be the property of the Customer. The Service Provider will manage the stock and provide a stock

level report to the Customer on a 6 monthly basis.

- 2.2.2.4. Where a Fault cannot be rectified without the replacement of a part(s), such part(s) shall, whenever possible, be taken from the Spares Holding. If a replacement part is not available from the Spares Holding, the Service Provider shall be entitled to pass on to the Customer the reasonable costs of any such replacement parts. In effecting repairs, wherever possible, all parts shall be used on a “remove and replace” basis such that the System is returned to full operability as quickly as possible.
- 2.2.2.5. If any parts replaced by the Service Provider in effecting a repair of the System can be economically repaired or refurbished by the Service Provider, such repairs shall be carried out at the Customer’s expense and the repaired or refurbished parts shall be returned to the Spares Holding.
- 2.2.2.6. The Service Provider shall advise the Customer when a solution to the Fault has been implemented and the System has been restored to the operational state that existed prior to the Fault being reported.

### 3. Customer’s Obligations

- 3.1. The Customer shall:
  - 3.1.1. be solely responsible for the operation, supervision, management and control of the System during the Term and shall ensure that the System is used in a proper manner by appropriately trained staff;
  - 3.1.2. subject to Clause 3.1.3, not alter or modify or allow any third party to alter or modify the System unless agreed otherwise in writing by the Service Provider or at the Service Provider’s request;
  - 3.1.3. perform the operational maintenance routines specified in the System handbooks or as instructed by the Service Provider;
  - 3.1.4. maintain the environmental conditions for the System as specified by the equipment manufacturer in any System documentation or as instructed by the Service Provider;
- 3.2. Subject to the Customer’s operational requirements, the Customer shall provide the Service Provider with full and free access to:
  - 3.2.1. the System at the appropriate Site;
  - 3.2.2. the appropriate Customer’s staff;
  - 3.2.3. facilities and services reasonably required to enable the Service Provider to perform the Support Services including but not limited to office accommodation, telephones and photocopying facilities.
- 3.3. The Customer at its own cost shall provide such telecommunication facilities as are reasonably required by the Service Provider for remote access testing and remote diagnostics.
- 3.4. The Customer shall use in connection with the System only such consumable supplies as are specified by the equipment manufacturer or as specified by the Service Provider.
- 3.5. In the event that approvals and/or permits are required to allow the Service Provider to perform the Support Services or to enter the Site, and such approvals and permits cannot be obtained by the Service Provider itself, the Customer shall obtain and maintain all such approvals and permits required for the Site or for the Service Provider to perform the Support Services.
- 3.6. The Service Provider shall, upon the Customer's request, provide any information reasonably required by the Customer in obtaining the necessary approvals and permits described in Clause 3.5.

**4. Extent of Servicing Obligations**

- 4.1. The Service Provider may exercise its right not to perform the Support Services and/or to charge the Customer for the Service Provider's time and material expenditure, reasonably incurred, if:
  - 4.1.1. on arrival at the appropriate Site or upon connection to the appropriate Site (via remote access), the Service Provider's service engineer finds that sufficient and proper access to the System and/or the recommended environmental conditions and/or other facilities and services are not provided; or
  - 4.1.2. the Customer has not been performing its obligations (in accordance with Clause 3); or
  - 4.1.3. the fault call was not warranted and/or due to a user error, and/or the fault is not in the System.
- 4.2. The Support Services are provided subject to:
  - 4.2.1. the proper use of the System by the Customer and its personnel, agents and sub-contractors;
  - 4.2.2. the System not being modified in any way without the Service Provider's prior approval;
  - 4.2.3. the System not being subject to unusual physical or electrical stress,and the Service Provider shall be under no obligation to provide the Support Services if:
  - 4.2.4. adjustment, repair, or parts replacement is required because of accident, neglect, misuse, failure of electrical power, environmental conditions, failure of storage media not furnished by the Service Provider, transportation or causes other than ordinary use;
  - 4.2.5. the System is maintained or repaired, or if attempts to maintain or repair the System are made, other than by the Service Provider approved personnel;
  - 4.2.6. the System or any part thereof is removed from its initial installation location and/or re-installed without the prior written approval of the Service Provider;
  - 4.2.7. unauthorised changes are made to the System;
  - 4.2.8. the Customer is in default of its obligations under the Contract.
- 4.3. The Support Services do not include:
  - 4.3.1. supply or fitting of operating materials and consumable such as printer paper or laser printer toner, laser drums, floppy discs or tapes, or accessories, the painting or refinishing of the System or the furnishing of materials for this purpose;
  - 4.3.2. electrical work external to the System;
  - 4.3.3. maintenance of accessories, alterations, attachments or other devices not furnished by the Service Provider;
  - 4.3.4. the repair, reconditioning or replacement of mechanical parts for printers or disc drive mechanisms or the replacement of cathode ray tubes or electronic display devices after more than five years from the date of their purchase. Such remedial work will, if so agreed by the Service Provider and authorised by the Customer, be carried out on a time and materials basis in accordance with the rates specified in the Contract.
- 4.4. If any part of the System cannot be economically maintained due to age, obsolescence or wear and tear, the Service Provider shall give the Customer 90 days notice thereof. The Service Provider shall continue to maintain the System for as long as, in its sole opinion, it is reasonable to do so but reserves the right to make an additional charge upon expiry of the notice period and to withdraw the Support Services for the affected

part of the System after a further notice period of 60 days has elapsed.

## **5. Health & Safety**

- 5.1. In performing its obligations under the Contract, the Service Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to persons working on the Site.
- 5.2. While on the Site, the Service Provider shall comply with any health and safety measures that are specific to the Site and relevant to the Support Services which are made known to the Service Provider by the Customer in respect of persons working there.

## **6. Intellectual Property Rights and Intellectual Property Rights Infringement**

- 6.1. The Service Provider shall at all times, both during and after the Term, retain ownership and all intellectual property rights in the Support Services and other intellectual property and the Customer acknowledges and agrees that it will, at no time, obtain any intellectual property rights in any of the same.
- 6.2. The Service Provider shall indemnify the Customer against any claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any third party's intellectual property rights in the course of the supply of the Support Services by the Service Provider, subject to the following conditions:
  - 6.2.1. the Customer shall promptly notify the Service Provider in writing of any allegations of infringement of which it has notice and will not make any admissions without the Service Provider's prior written consent;
  - 6.2.2. the Customer shall, at the request and expense of the Service Provider, allow the Service Provider to conduct and/or settle all negotiations and litigation resulting from any claim;
  - 6.2.3. the Customer shall, at the request of the Service Provider, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Service Provider for any reasonable expenses incurred in so doing.
- 6.3. The indemnity specified in Clause 6.2 does not extend to claims arising directly or indirectly from the use of the Support Services with software, data, or materials not supplied by the Service Provider if such alleged infringement would not have arisen but for the use of such software, data or materials with the Support Services.
- 6.4. Ownership of any specifications, drawings, diagrams or other material obtained or received by the Service Provider from the Customer shall at all time remain with the Customer.

## **Annex A: Offshore Working**

### **1. Definitions**

- 1.1. In these Terms and Conditions, except where the context otherwise requires, the definitions set out below shall apply:

"Stand-by Charges" means the charge for any stand-by time during which the Service Providers' employees cannot access the Offshore Site payable, by the Customer in accordance with the General Terms and Conditions.

### **2. Offshore Working**

- 2.1. The Customer's representative responsible for the site, the vessel master or helicopter pilot (as applicable), having due regard to Health and Safety Executive requirements and the safety of the people performing the Support Services, shall determine if it is



possible or not to access the Offshore Site in a safe manner and thus perform the Support Services related to the Offshore Site.

- 2.2. In the event that safe access to the Offshore Site cannot be obtained and the Service Provider's employees are ready for departure at the onshore facilities, the Customer shall pay to the Service Provider a Stand-by Fee as specified in the Contract for any day or part day where safe access cannot be obtained.
- 2.3. For the avoidance of doubt, no individual person shall be under any obligation to perform a transfer activity (including hoisting), which the person himself considers to be unsafe and beyond his own perception of acting safely. However, in such event no fee or cost is payable by the Customer.
- 2.4. The Customer shall, at its own expense, provide suitable transportation to enable the Service Provider's personnel to reach the Offshore Site to perform the Support Services.
- 2.5. Notwithstanding Clause 1.2, the Customer may temporarily suspend the performance of the off-shore element of the Support Services or parts thereof by giving written notice to the Service Provider.
- 2.6. The notice of suspension shall specify which part of the Support Services shall be suspended, the effective date of the suspension and the expected date for resumption of the Support Services.
- 2.7. Upon receipt of such notice the Service Provider shall, unless instructed otherwise, discontinue the Support Services or that part of the Support Services detailed in the notice, on the date and to the extent specified. The Service Provider shall resume the Support Services after notice by the Customer.
- 2.8. In the event of a suspension of the Support Services, the Customer shall compensate the Service Provider for costs and expenses arising from:
  - 2.8.1. the demobilisation and subsequent remobilisation of personnel, sub-contractors, equipment, deliverables and other materials;
  - 2.8.2. personnel, sub-contractors, equipment, deliverables and other materials which must be kept available in accordance with the Customer's instructions; and/or
  - 2.8.3. other costs incurred by the Service Provider which are necessary and directly linked to the suspension.
- 2.9. No compensation shall be payable to the Service Provider to the extent that the suspension of the Support Services is caused by the negligent act or omission of the Service Provider.
- 2.10. If the Support Services, or any part thereof, have been suspended continuously for a period exceeding 120 days, the Service Provider may cancel the Contract for that part of the Support Services which is suspended, by giving 30 days written notice to the Customer. The Customer may avoid the cancellation by ordering a resumption of the Support Services within 30 Days after receiving the notice from the Service Provider.

## Part 4 - Terms and Conditions for the Supply of ICT Support Services

### 1. Definitions and Interpretation

- 1.1. In these Terms and Conditions, except where the context otherwise requires, the definitions set out in the General Terms and Conditions and those below shall apply:

“Site” means the place or places, made available by the Customer, at which work is to be done by the Service Provider, as detailed in the Contract; and

### 2. Purchase of Hardware or Software

- 2.1. The purchase by the Customer of hardware or software from the Service Provider in the course of its performance of the services contemplated under this Contract shall be subject to the Service Provider’s Additional Terms and Conditions (attached as Annex A to this Contract). Repairs and installation and support services relating to such hardware and software shall be governed by the provisions of the General Terms and Conditions.

### 3. Customer Software

- 3.1. The Customer shall ensure that it is lawfully entitled to use any software installed on the ICT equipment covered under this Contract. Any review of the licence status of the Customer software carried out by the Service Provider shall be done to such standard as would reasonably be expected of a professional provider of similar ICT services. However, the Service Provider accepts no liability for any software operated by the Customer which is not legally licensed.

### 4. Chargeable Work

- 4.1. References in this Contract to “chargeable” work shall be construed as work not falling within the Charges specified in the Contract, but charged separately at the Service Provider’s then current standard hourly rate(s) for employee(s) or contractor(s) of suitable expertise and/or qualifications.
- 4.2. If requested by the Customer in writing, the Service Provider shall notify the Customer of its standard hourly rate(s) prior to the Service Provider undertaking any such chargeable work and shall thereafter maintain a fixed rate for the specific piece of chargeable work for which the notification is given. Otherwise, the Service Provider’s standard hourly rates shall be subject to variation by the Service Provider from time to time at its discretion.
- 4.3. References in this Contract to any “hourly rate” of the Service Provider shall be construed as references to a rate subject to the above provisions concerning notification, fixing and variation from time to time.

### 5. Health & Safety

- 5.1. In performing its obligations under the Contract, the Service Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, and to British Standards Specification where applicable. All new equipment supplied will conform to all current EU EMI Directives and Low Voltage Directives. The Service Provider will supply appropriate Certification where necessary.
- 5.2. While on the Site, the Service Provider shall comply with any health and safety measures that are specific to the Site and relevant to the Support Services which are made known to the Service Provider by the Customer in respect of persons working there.

## **Annex A: Additional Terms and Conditions for the Purchase of Hardware and Software**

### **1. Introduction**

- 1.1. All purchases of hardware and software from the Service Provider under this Contract are made strictly in accordance with the following Terms and Conditions. No alteration or amendment to the provisions of these Terms and Conditions will be effective unless agreed in writing by the Service Provider.
- 1.2. All specifications, drawings, descriptive weights and dimensions provided in connection with any quotation for the goods are approximate only and will not form part of any contract.
- 1.3. All prices quoted are exclusive of Value Added Tax which is payable by the purchaser at the current prevailing rate.
- 1.4. The Service Provider retains ownership of all goods until payment has been made in full although all risk in the goods passes to the purchaser on delivery of the goods to the purchaser's premises.
- 1.5. Where a credit account has been authorised by the Service Provider's Accounts Department goods will be provided up to the agreed credit limit and upon the condition that the purchaser agrees to settle all invoices in full within 30 days of the invoice date. Warranty will not be provided where any goods are overdue for payment.
- 1.6. Without prejudice to any of its other rights or remedies, the Service Provider may terminate any contract immediately if the purchaser is unable to pay its debts as they become due, makes any voluntary arrangement with its creditors or becomes bankrupt, insolvent or the subject of a dissolution, administration order or has a receiver, manager or administrative receiver appointed over its assets or any part of its business or has a winding-up order made against it or goes into liquidation or if anything having a substantially similar effect to such events occurs.
- 1.7. All purchasers will be deemed to have read and accepted these terms and conditions before making their purchase.

### **2. Delivery**

Any date of delivery indicated by the Service Provider is an estimate only and the Service Provider is not liable for any loss, costs, damages or expenses caused directly or indirectly by any delay.

### **3. Hardware**

- 3.1. Unless the contrary is notified in writing at the time of purchase the Service Provider will warrant all purchases of new hardware for a period of one year from date of purchase (Return to Base). Where the original manufacturer's warranty exceeds one year this will be passed on to the purchaser if possible. Where printers and monitors have manufacturer's warranties extended in period or by extension to on-site this will be passed on to the purchaser if possible. Where items have extended warranties this will be explained at the time of purchase.
- 3.2. Warranty claims can only be considered when the item is returned within the warranty period referred to above without physical damage and still bearing the Service Provider's stock labels plus any manufacturer's or distributor's stock labels. The original invoice must be submitted with the faulty item and an explanation of the fault, in writing if possible, and with the purchaser's name, address and phone number if possible. Return to Base warranty means that the customer is responsible for returning the affected item to the Service Provider at its normal address and collecting it from that address after the repair has been completed. The warranty is only available to the original purchaser.
- 3.3. Components with RAM or CMOS Integrated Circuit devices which have been damaged by static electricity cannot be replaced under the warranty. Purchasers should make themselves aware of the special precautions needed when handling these devices.

- 3.4. Where the item cannot be replaced under the terms of the warranty, the warranty shall not apply but the Service Provider will try to provide a similar item as replacement at a special cost plus price, or repair the faulty item at a reduced repair cost based on parts at cost plus. This offer extends only to the original purchaser and is made entirely at the Service Provider's discretion.

#### **4. Software**

- 4.1. The Service Provider will if possible pass on to every purchaser of software the warranty as supplied by the software manufacturer and with the benefit of the software licence supplied with the product. No responsibility can be accepted for damage or loss caused by the use of software purchased from the Service Provider because of any fault with the software or any incompatibility with any other software. All software products are continually upgraded with new versions as faults are discovered by the program makers and where free upgrades are made available these will be passed on free of charge to the purchaser if possible. Where improved versions are offered at discount prices to existing users the discounts will be passed on to purchasers if possible.
- 4.2. Where Operating System or Application software purchased from the Service Provider with a PC has been corrupted in use, within twelve months of purchase, whether by the user or by means unknown, the Service Provider will reinstate it at no cost on a Return to Base warranty basis. The purchaser will have to wait for available workshop time as if it were a chargeable repair but every attempt will be made to reinstate it as quickly as possible. The software will be reinstated to the condition it was originally supplied in provided that the user supplies the original programme disks supplied with the PC. Data files cannot be replaced under warranty and it is the responsibility of the user to keep backup copies of all data files on separate media. The Service Provider will offer advice with the reinstatement of backup files but accepts no responsibility for the restore process.

#### **5. General**

- 5.1. If any part of these Terms and Conditions proves to be illegal or unenforceable, the other provisions and the remainder of the provision in question shall continue in full force, and the parties shall amend the illegal or unenforceable part so as to carry out to the maximum extent possible the original intent of the provision.
- 5.2. Nothing in these Terms and Conditions affects the purchaser's statutory rights.
- 5.3. The Service Provider does not accept responsibility or liability for any loss or damage, including consequential loss, data loss, data corruption, loss of profits, loss of goodwill, loss of revenue or third party claims or demands arising in connection with the contract, regardless of the cause of the loss or damage.
- 5.4. Unless stated above all other conditions and warranties express or implied whether arising by statute or common law or otherwise are hereby expressly excluded and the Service Provider is not liable for any loss injury or damage caused or arising by reference to them.
- 5.5. If notwithstanding the above it is held that liability attaches to the Service Provider for breach of any condition or warranty then the damages recoverable by the purchaser in respect of such breach is limited to the reasonable cost of remedying the defect or other matter constituting such breach (provided that the Service Provider is first afforded the opportunity of itself carrying out the remedial work) and the Service Provider will not in any circumstances be liable for any other loss or injury or damages suffered by reason of such breach.
- 5.6. A person who is not a party to the contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 5.7. These Terms and Conditions are subject to English Law and the non-exclusive jurisdiction of the English Courts.

## Part 5 – Terms and Conditions for the Supply of Network Connectivity

### 1. Definitions

- 1.1. In these Terms and Conditions, except where the context otherwise requires, the definitions set out in the General Terms and Conditions and those below shall apply:

“Early Termination Fee” means:

- (i) all Charges that are accrued up to and including the date of termination; plus
- (ii) the total amounts of all line rental charges still remaining for the Initial Term or any extension thereof from the date of termination until the date of expiry of the Initial Term or any extension thereof;

“Network Connectivity” means the telecommunications circuits provided by Vysiion under the Contract.

### 2. Provision of Network Connectivity

- 2.1. Where Vysiion is providing Network Connectivity, as detailed in Schedule 1:

2.1.1. for Vysiion procured ‘point to point’ telecommunications circuit(s) between the Customer’s premises and another nominated facility, the details of the nominated facility and the bandwidth of the telecommunication(s) circuit provided shall be specified in Schedule 1. The Customer acknowledges that the specified bandwidth of such telecommunications circuits is capped and may not be increased unless otherwise agreed in writing and subject to payment of Vysiion’s additional Charges in relation thereto; and/or

2.1.2. ISDN, PSTN or other telecommunications circuits of the type specified in Schedule 1.

Unless indicated otherwise in Schedule 1, Network Connectivity will be available to the Customer on a 24-hour, 7-day per week basis (for the avoidance of doubt, this excludes downtime attributable to previously scheduled routine and preventative maintenance).

- 2.2. Network Connectivity is provided subject to the availability of the necessary services from Vysiion’s telecommunications providers. Vysiion may, without liability, by prior written notice to the Customer, terminate or withhold the provision of the Network Connectivity (or any portion of the Network Connectivity), if:

2.2.1. Vysiion no longer has the legal right to provide the Network Connectivity; or

2.2.2. Vysiion’s telecommunications providers terminate services to Vysiion or withdraw or substantially alter any underlying tariff(s) resulting in a material, adverse effect on Vysiion’s operational or financial ability to provide the Network Connectivity.

- 2.3. Vysiion will use reasonable endeavours to comply with any agreed date or dates for the supply of the Network Connectivity but, unless otherwise expressly agreed, such date or dates shall constitute only statements of expectation and shall not be binding. Accordingly, the time of the supply of the Network Connectivity shall not be of the essence and if Vysiion fails to supply the Network Connectivity by any specified date, such failure shall not constitute a breach of the contract and the Customer shall not be entitled to treat the contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom. The Network Connectivity may be provided by Vysiion in advance of the quoted delivery date on giving reasonable notice to the Customer.

### 3. Effects of Termination

- 3.1. If the Customer terminates the Contract or any part of the Network Connectivity before the expiry of the Initial Term or any extension thereof, the Customer shall pay the Early Termination Fee.

- 3.2. Following any termination of a Contract the Customer shall within seven days of the date of that termination at its own expense return to Vysiion all equipment which belongs to Vysiion (including without limit all cables and power supplies). Should the Customer fail to return any such equipment, the Customer shall remain liable for the Charges applicable under the Contract until such time as the equipment has been returned by the Customer.
- 3.3. In the event that any equipment is returned to Vysiion other than in working order, Vysiion reserves the right to charge to the Customer the cost of replacement of the equipment where it reasonably considers that the fault or damage was caused by an act or omission of the Customer. In calculating such replacement cost, Vysiion shall allow for the age of the equipment as well as fair wear and tear which would have occurred during the Contract Term.

#### **4. Property and Risk**

- 4.1. Risk of damage to or loss of any equipment rented to the Customer as part of the Network Connectivity shall pass to the Customer at the time of delivery at the Customer's premises or, if the Customer wrongfully fails to take delivery of the equipment, the time when Vysiion has tendered delivery of the equipment.
- 4.2. The property in any equipment shall not pass to the Customer, who shall hold such equipment as Vysiion's fiduciary agent and bailee, and shall keep the same separate from those of the Customer and third parties and properly stored, protected and fully insured and identified as Vysiion's property.
- 4.3. If the Customer fails to deliver up equipment to Vysiion in accordance with clause 2.1 above, Vysiion may enter on any premises of the Customer or any third party where the equipment is stored and repossess the same.
- 4.4. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any equipment which shall remain the property of Vysiion.