

## CUSTOMER AGREEMENT

This Agreement ("the Agreement") applies to the provision of all goods and services provided by CLARUS NETWORKS LIMITED (SC492820) a company incorporated under the Companies Act 2006 and having its registered office at 2f Inchmuir Road, Whitehill Industrial Estate, Bathgate EH48 2EP ("Clarus") to you ("the Customer").

### 1. Definitions and Interpretation

1.1. In this Agreement the following meanings shall apply (save where the context otherwise requires):

- a) "**Acceptable Use Policy**" means the policy annexed at Schedule 1 hereof;
- b) "**Affiliate**" means each and any Subsidiary or Holding Company of a party and each and any Subsidiary of a Holding Company of a party;
- c) "**Agreement**" means this Agreement including the schedules hereto and the Airtime Agreement;
- d) "**Airtime Agreement**" means the contract between Clarus and the Customer for the provision of Starlink airtime;
- e) "**Commencement Date**" means the last date of signing this agreement;
- f) "**Confidential Information**" means any and all information of a confidential or proprietary nature (including trade secrets and information of commercial value information) (whether in oral, written or electronic form) belonging or relating to that party, its business affairs, activities, products or services which (i) either party has identified as confidential or proprietary, (ii) either party, orally or in writing, has advised the other party is of a confidential nature, or (iii) due to its character or nature or the surrounding facts and circumstances, a reasonable person in a like position and under like circumstances would treat as confidential which may become known to the Receiving Party and which relate to the Disclosing Party or any of its Affiliates;
- g) "**Data Protection Law**" means the Data Protection Act 2018, UK GDPR as defined by section 2 of The Data Protection, Privacy and Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019 and all relative UK data protection legislation in force and as amended or replaced from time to time;
- h) "**Downtime**" means any period during Service Hours during which there is total loss of the Services;
- i) "**Equipment**" means the equipment provided by Clarus to the Customer in provision of the Services and more particularly detailed in the Quote and Purchase Order;
- j) "**Force Majeure Event**" means a cause beyond the reasonable control of a party (or its sub-contractors, where applicable) including but not limited to acts of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute, illness, flood, wind, lightning, other weather conditions, earthquake, fire, act of terrorism, epidemic, pandemic, imposition of sanctions, non-performance or delay in performance by suppliers, agents or subcontractors, or interruption or failure of utility service;
- k) "**Initial Term**" means the minimum contract period detailed in the Airtime Agreement;
- l) "**Intellectual Property Rights**" means all copyright, patents, database rights, registered and unregistered design rights, trade marks and service marks and applications for any of the foregoing, rights to inventions, business names and domain names, product names rights in get up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in computer software (including object code and source code), semi-conductor topography rights together

with all trade secrets, discoveries, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all applications for, and rights to renew, the same;

- m) **"Month"** means a calendar month and "monthly" shall be construed accordingly;
- n) **"Outage"** means any period during which loss of power supply or internet connectivity or any other loss of service prevents operation of the Equipment, Starlink Kit or provision of the Services or Starlink Services;
- o) **"Sanctions"** means any laws, rules, regulations or executive orders relating to economic, financial, or trade sanctions implemented or enforced by: (a) the U.S. Government including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury and the U.S. Department of State; (b) the United Kingdom including, without limitation, the Office of Financial Sanctions Implementation of His Majesty's Treasury; and/or (c) any other relevant governmental authority that implements or enforces economic, financial, or trade sanctions;
- p) **"Service Fee"** means the fees charged by Clarus to the Customer for use of the Services, the Equipment, Starlink Services and/or Starlink Kit as detailed in the Quote and Purchase Order;
- q) **"Service Hours"** means the hours during which the Services are to be provided as set out in Service Level Agreement. References to "hour(s)" and "minute(s)" in this Agreement will, unless otherwise indicated, be taken only to refer to the elapse of time during Service Hours;
- r) **"Service Interruption"** means a period during Service Hours during which there is partial loss of the Services;
- s) **"Service Levels"** means the levels of performance to which the Services are to be provided to the Customer by Clarus as set out in the Service Level Agreement;
- t) **"Service Level Agreement"** means the Service Level Agreement annexed at Schedule 2 hereof;
- u) **"Services"** means the services detailed in the Quote and Purchase Order;
- v) **"Starlink"** means Starlink Internet Services Limited having its registered office at Floor 3, Block 3, Miesian Plaza, Dublin 2, D02 Y754, Ireland;
- w) **"Starlink Kit"** means the Starlink equipment supplied by Clarus relative to the Starlink Services;
- x) **"Starlink Services"** means the two-way satellite-based internet service provided by Starlink;
- y) **"System Data"** means (a) all end user network data, details, statistics, metrics, measurements and other information collected and generated by the Services and/or the Equipment; and (b) any initial, final, or intermediate product or output of the application of analytical or data processing techniques used to generate and analyse any of the foregoing end user information; and
- z) **"Term"** means the Initial Term and any period thereafter during which neither party terminates the Agreement.

1.2. The headings in this Agreement do not affect its interpretation.

1.3. Unless the context otherwise so requires:-

- a) references to Clarus and the Customer include their permitted successors and assignees;
- b) references to statutory provisions include those statutory provisions as amended, substituted or re-enacted;
- c) references to any gender include all genders;
- d) words in the singular include the plural and in the plural include the singular; and

e) references to schedules and clauses are to schedules and clauses of this Agreement.

1.4. In the event of any conflict between the terms and conditions of this Agreement and any provision of any service level agreement, the terms and conditions of this Agreement shall prevail.

1.5. "Holding company" shall be construed in accordance with sections 1159 and Schedule 6A of the Companies Act 2006.

1.6. "Subsidiary" shall be construed in accordance with sections 1159 and Schedule 6A of the Companies Act 2006.

## **2. Provision of Services and Equipment**

2.1. Clarus undertakes with effect from the Commencement Date and in consideration of the payment of the Service Fee by the Customer to supply the Services, Equipment, Starlink Services and Starlink Kit to the Customer on a non-exclusive basis upon the terms and conditions set out in this Agreement. No Equipment or Starlink Kit shall be delivered to the Customer until the Customer is fully onboarded with an account set up or payment has been received.

2.2. Clarus will act in a diligent and professional manner and exercise reasonable care and skill in accordance with the terms of this Agreement and good industry practice.

2.3. The Customer acknowledges and agrees that the Services and Starlink Services may not be available in all locations and are contingent upon network availability and approval of Clarus and Starlink. Clarus will undertake a service availability check before assigning any services plans to the Customer. Software copies and updates installed on the Equipment and/or Starlink Kit are licensed only (and not sold) on a non-exclusive, non-transferrable, limited and revocable basis. Said software copies and updates are licensed for use on the Starlink Kit and subject to the Software Usage & Licence Terms referred to in clause 8.5(h).

2.4. Any Equipment and Starlink Kit must be securely installed in a location with a clear field of view and, for Starlink Kit, in accordance with the Starlink Install Guide (available via the Starlink Customer Portal). A minimum separation distance of 4 metres must be maintained between Starlink and other antennas. Customer shall not modify the Equipment or Starlink Kit contrary to the Install Guide.

2.5. Starlink Services, Starlink Kit, Starlink Specification, prices and any relative terms or agreement may be amended or discontinued at any time on notice. By continuing to use the Starlink Services and/or Starlink Kit you accept and agree to any such amendments or changes.

2.6. Risk in the Equipment and Starlink Kit shall pass to the Customer on delivery of same.

2.7. The Customer has forty-eight (48) hours from the time of delivery in which to reject goods in case of damage during transit.

## **3.Support Services**

- 3.1. Clarus shall provide twenty-four (24) hours a day, seven (7) days a week support to Customers for any and all issues with the Services in accordance with Schedule 2.
- 3.2. Clarus shall respond promptly to all requests for support relating to the Services and Equipment in accordance with the Service Level Agreement.

#### **4. Duration of Contract**

This Agreement shall commence on the Commencement Date and shall (subject to the provisions for termination set out in this Agreement) continue for the Term. Neither party shall be entitled to terminate this Agreement during the Initial Term save in accordance with Clauses 14.3, 14.4 or 14.5; or in the case of a Force Majeure Event. In order to terminate this Agreement at the end of the Initial Term or at any time thereafter, each party must give to the other no less than 30 days' prior written notice.

#### **5. Fees and Charges**

- 5.1. The Customer agrees to make payment for the invoiced amount within 30 days from the date of the invoice. Payment shall be considered made on the date the funds are received by Clarus.
- 5.2. The Customer shall pay to Clarus the charges for the Service Fee in accordance with the provisions of the Airtime Agreement monthly in advance. All sums shall be paid in Pounds Sterling unless expressly stated otherwise. Where Clarus agrees in writing to accept payment in any other currency, the Service Fee may be subject to change in accordance with exchange rate fluctuations and any additional costs associated with conversion of payment made to Pounds Sterling shall be met by the Customer.
- 5.3. Any shipping and handling charges for delivery of the Equipment and Starlink Kit are non-refundable. Clarus shall only be obliged to ship or make delivery of any Equipment or Starlink Kit to the Customer at a location as agreed and detailed in the Quote and Purchase Order and Clarus shall be permitted to instruct any carrier of its choosing.
- 5.4. The Customer shall pay to Clarus interest at the rate of 3 per cent per annum above the base rate of the Bank of England in force from time to time in respect of the late payment of any sums due under this Agreement, until payment in full. The Customer shall meet all reasonable costs, including legal fees, incurred by Clarus in recovering any sums due under this Agreement.
- 5.5. Clarus shall be entitled to increase the Service Fee with effect from the end of the Initial Term on giving not less than 30 days' prior written notice to the Customer. Notwithstanding the foregoing, any fees or charges for the Starlink Kit and/or Starlink Services may be increased at any time during the Term.
- 5.6. All sums due under this Agreement are expressed exclusive of UK VAT and/or any other local or federal taxes which will be charged at the appropriate time.

#### **6. Service Interruptions**

- 6.1. Outages or Service Interruptions may be made by Starlink when, in its reasonable opinion, it is necessary to facilitate improvements or carry out maintenance to the Services.
- 6.2. Where Outages or Service Interruptions are required in terms of Clause 6.1, Clarus will notify the Customer of the anticipated commencement time and estimated duration of

the Outage or Service Interruption as soon as they are made aware by Starlink. Clarus makes no representation and gives no warranty that any Outages or Service Interruptions will be resolved in accordance with the Service Level Agreement.

- 6.3. Clarus or Starlink may adopt reasonable network management policies to support the Customer's use of the Services.
- 6.4. Neither Clarus nor Starlink are responsible for (i) damage to the Equipment or Starlink Kit after delivery, or for the repair, modification or disassembly of Equipment or Starlink Kit by anyone other than any authorised agent specified in Schedule 1; (ii) a Force Majeure event; (iii) failure to follow Clarus or Starlink instructions; (iv) spills of food or liquids on Equipment or Starlink Kit; (v) planned or emergency maintenance on the network; (vi) problems with the Customer's electrical power or network equipment; (vii) misuse, abuse, accident, vandalism, alteration or neglect; (viii) normal wear and tear or deterioration, or superficial defects, dents or marks that do not impact the performance of the Equipment or Starlink Kit; (ix) use of the Services or Starlink Services in combination with other devices or software not approved by Clarus; (x) the Customer's inability to obtain or maintain the necessary permissions, authorisations or permits to use the Services or Starlink Services; or (xi) manual re-pointing of any antennae.
- 6.5. The Customer acknowledges that the Starlink Services and Starlink Kit are novel, under development by Starlink, and subject to change. The capabilities and specifications of the Starlink Services and Starlink Kit may be amended from time to time and neither Clarus nor Starlink warrant that the use of either will meet the Customer's requirements, be uninterrupted, error free or completely secure.

## **7.Warranties**

- 7.1. The Services, Equipment, Starlink Services and Starlink Kit are provided on an "as is" basis and "as available", and the Customer's use of the Services is at its own risk. Neither Clarus nor Starlink make, and to the maximum extent permitted by law hereby disclaim all, warranties (whether express, implied or statutory) or other standards of performance, guarantees, or any other terms implied by law, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, requirement or use, non-infringement and any warranty arising out of course of performance, dealing or trade usage. Specifically, Clarus and Starlink do not warrant that use of any or all of the Services, the Starlink Services, Equipment and/or the Starlink Kit will meet the Customer's requirements, be uninterrupted, error free or completely secure.
- 7.2. Clarus does not and cannot control the flow of data to or from its network, the internet generally or any other channel for communicating data. Such flow depends in large part on the performance of internet and communication services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections. Although Clarus will use reasonable endeavours to avoid such events, Clarus cannot guarantee that such events will not occur. Accordingly, Clarus disclaims any and all liability resulting from or related to such events.
- 7.3. Clarus warrants to the Customer that it shall comply with all applicable laws and that the Services and Equipment, when used by the Customer in accordance with this Agreement will not breach any law, statute or regulation applicable under Scots Law.
- 7.4. The Customer acknowledges that the Services and Equipment are designed to be compatible only with that software and those systems specified as compatible by Clarus

and Clarus does not warrant or represent that the Services and Equipment will be compatible with any other software or systems.

## **8. Customer Obligations**

- 8.1. The Customer shall provide all such assistance, facilities and information to Clarus as Clarus may reasonably require in order to enable it to carry out its obligations under this Agreement and the Customer will cooperate fully with Clarus in its provisions of the Services.
- 8.2. The Customer shall provide Clarus with (i) all required provisioning information to enable Clarus and/or Starlink to fulfill the Customer's order; and (ii) immediate notice of any suspected security breach of any Customer system connected to (or providing access to) the Services or Starlink Services (including, without limitation, the Equipment and Starlink Kit).
- 8.3. In the event that the Customer is in breach of any of its obligations under this Agreement:-
  - a) Clarus shall not be held responsible should the Services or Starlink Services fail to comply with the terms of this Agreement or the Service Level Agreement as a result (directly or indirectly) of such breach by the Customer;
  - b) the Customer shall be liable for and Clarus shall be entitled to charge the Customer, for time engaged in rectifying any resulting problems at Clarus's current standard charging rates; and
  - c) Clarus may, without any liability, terminate, deactivate, refuse to activate or suspend the Services (including any support services provided) without prejudice to any of its other rights and remedies.
- 8.4. In case of violation of the Acceptable Use Policy, the Services and/or Starlink Services may be suspended temporarily or permanently, and may be terminated.
- 8.5. The Customer represents, warrants and undertakes that:
  - a) it will not use the Services or Equipment for any unlawful purpose or otherwise than in accordance with the terms of this Agreement;
  - b) it shall comply with all laws (including, without limitation, anti-corruption laws, all applicable export control laws and regulations, telecommunications, privacy, copyright, website blocking, internet use by minors, data protection, lawful intercept and government access to data laws) in connection with its performance under this Agreement, including, without limitation, (a) obtaining and/or maintaining all regulatory and legal licenses and certifications, governmental or otherwise necessary for the Customer's performance under this Agreement; (b) furnishing to Clarus all documentation legally required in connection with the exportation or importation of the Services, Equipment, Starlink Services or Starlink Kit; and/or (c) complying with any conditions or restrictions on the provision of the Services, Equipment, Starlink Services or Starlink Kit;
  - c) the Customer will shall obtain any authorisations which may be required for use of the Starlink Services in motion and shall comply with all applicable laws and regulations associated with such use and/or cease the use of the Starlink Services if such authorisations cannot be obtained;
  - d) (i) use of the Services and the Starlink Services is for its own internal use and not for resale (or to be bundled) by the Customer; (ii) the Customer is not a private consumer and neither the Services nor the Starlink Services shall be used for any personal or household purpose; and (iii) it has obtained any necessary consents and permissions

- for all provisioning information (however submitted) of the Customer and such provisioning information is accurate, reliable and complete, and that the Customer will update such provisioning information as needed on a timely basis;
- e) the Services are a commercial communication product and are not intended be used as the sole means of connectivity for any mission-critical, safety-of-life service or for offensive or defensive military purposes;
  - f) it shall not (i) copy, modify, disassemble, decompile, reverse engineer, create derivative works of, or make any other attempt to discover or obtain the source code for any of the software or systems which deliver the Services or Starlink Services; (ii) create or attempt to create a substitute/competitive product or service using the Services or Starlink Services under any circumstances; or (iii) permit either direct or indirect use of the Services or Starlink Services by any third party (except as expressly set forth in this Agreement);
  - g) use the Services and Equipment in accordance with Clarus's Acceptable Use Policy;
  - h) use the Starlink Services and Starlink Kit in accordance with the Starlink Policies and Regulatory Notices applicable and as amended from time to time, including but not limited to the [Starlink Privacy Policy](#); [Acceptable Use Policy](#); [Starlink Specifications](#); [Software License & Usage Terms](#); [Intellectual Property Policy](#); [Supplemental EEA+ Privacy Notice](#); and [Complaints Code of Practice](#);
  - i) any software, data, equipment or other materials provided by the Customer to Clarus or employed by the Customer in its use of or receipt of the Services shall not infringe any Intellectual Property Rights, privacy or personal data rights or interests of any third party nor shall it be obscene or defamatory nor violate the laws or regulations of any country which may have jurisdiction over such activity;
  - j) it shall notify Clarus as soon as reasonably practicable of any infringement of Intellectual Property Rights in or to the Services or Equipment;
  - k) it will not sub-licence its rights to access and use the Services or Equipment or permit any unauthorised person to access or use the Services or Equipment;
  - l) it will not republish or redistribute any content or material from the Services nor make any alteration to the Services, Equipment or any platform used by Clarus without prior written permission from Clarus;
  - m) it will not conduct or request that any other person conduct or load any testing or penetration testing in respect of the Services;
  - n) it will ensure that only officers, employees, agents and sub-contractors of the Customer gain access to the Services and Equipment and shall use all reasonable endeavours to maintain reasonable security in respect of access to the Services and Equipment;
  - o) it shall be liable and solely responsible for the content of any transmission from or to the Equipment or by or to Clarus and made via the Services, including, without limitation, any actual or alleged libel, obscenity, indecency, infringement of Intellectual Property Rights, or breach of privacy or security content or information displayed or transmitted by the Customer; and
  - p) it shall (I) comply with all applicable Sanctions; and (II) not deliver, transfer, export, or re-export any of the Services or Starlink Services, hardware, software, technical data or other information, directly or indirectly, to any individual or entity that is: (i) designated or identified on any list of persons that are the subject or target of Sanctions, including, without limitation, the Specially Designated Nationals and Blocked Persons List, the Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions and the Consolidated List of Financial Sanctions Targets in the UK; (ii) located, organised or resident in a country or territory that is the subject of comprehensive Sanctions, including, as of the date hereof, Belarus, Cuba, Iran, North Korea, Russia, Syria and the Crimea region of Ukraine; (iii) owned or controlled

by, or acting for on behalf of, any individual or entity described in the foregoing subsections (i) or (ii); or (iv) otherwise the subject or target of Sanctions.

- 8.6. In the event of any breach of any of the foregoing representations or warranties, in addition to any other remedies available at law, Clarus will have the right to suspend immediately any and all Services, if deemed reasonably necessary by Clarus to protect the proper interests of Clarus. If practicable and depending on the nature of the breach, Clarus may (in its absolute discretion) give the Customer an opportunity to cure such breach during such period of time to be determined solely by Clarus. In such case once the Customer has cured the breach, Clarus will restore the Services.
- 8.7. The Customer shall not directly or indirectly bring into disrepute or in any manner impair or damage the image, reputation or goodwill of Clarus or the Services. If Clarus reasonably determines that such use of the Services is likely to affect the image, reputation, or goodwill of Clarus, such use shall be treated as an Act of Default and Clarus shall be entitled to terminate this Agreement in accordance with clause 14.3.

### **9. Security Measures**

- 9.1. Each party recognises and accepts that it is impossible to maintain complete security in respect of online services. Clarus will take all reasonable steps to prevent security breaches in provision of the Services but does not guarantee security.
- 9.2. Clarus reserves the right isolate the Customer's environment in the event of any security or performance issues arising in respect of the Services or the Equipment.
- 9.3. The Customer is responsible for implementing good IT security practices among staff, contractors and all agents acting on their behalf or under their instruction and is solely responsible for any damage caused by any such unauthorised access.

### **10. Insurance and Indemnity**

- 10.1. Clarus shall effect and maintain at all times during the Term adequate professional indemnity insurance cover up to a maximum of £1,000,000 for any claim or liability under the Agreement.
- 10.2. The Customer shall indemnify, defend and hold harmless Clarus, its affiliates and each of their respective officers, directors, agents, employees, contractors, successors and assigns in respect of any third party claims, liabilities, losses, damages, suits, actions, demands, proceedings (whether legal or administrative), judgments and costs and expenses (including, without limitation, reasonable solicitor's fees) arising out of or relating to: (1) the Customer's breach or alleged breach of clause 8.5 of this Agreement; (2) any act or omission the Customer that results in loss of, or damage or degradation to, any portion of the Services or Equipment; (3) infringement or alleged infringement of any third party's Intellectual Property Rights by reason of the Customer's use of the Services or Equipment; and (4) any other third party claims including claims arising out of or related to the resale, installation, marketing, use, repair, removal or any other works, carried out with respect to the Services, Equipment, Starlink Services or Starlink Kit.
- 10.3. The Customer acknowledges and agrees that it shall have no right to seek, and shall not seek, any indemnification (or defence obligations) from Clarus or Starlink.
- 10.4. Clarus shall notify the Customer of any claim for indemnity by providing written notice. With respect to any indemnifiable claim for which such notification is provided, the

Customer shall have the right to control and bear full responsibility for the defence of such claim (including, without limitation, any settlements); provided however, that (1) Clarus shall at the cost of the Customer, provide assistance and cooperation to the Customer as is reasonably necessary for the defence or settlement of such claim, including, without limitation, the filing of all pleadings and other court processes, the provision of all relevant information and documents, and providing reasonable access to relevant employees; (2) Clarus shall not make any admissions, settlements, or compromises without the prior written consent of the Customer; (3) Clarus shall have the right to participate in the defence of such claim with counsel of its choice at its own expense; and (4) the Customer shall not, without Clarus's consent agree to any settlement which (i) contains a stipulation to, or admission of, any liability or wrongdoing on behalf of Clarus; (ii) consents to any injunction against Clarus; or (iii) requires any specific performance or non-pecuniary remedy by the Clarus.

10.5. Notwithstanding anything contained in this Agreement to the contrary, and to the maximum extent permitted by applicable law Clarus, Starlink and each of their respective affiliates shall not be liable to the Customer, nor shall the Customer make any claim against any of the foregoing parties, for (a) injury, loss, or damage sustained by reason of any unavailability, delay, faultiness, use, or failure of the Services, Equipment, Starlink Services and/or Starlink Equipment; and/or (b) any acts or omissions of Clarus, Starlink and each of their respective affiliates made in response to (i) a violation or suspected violation of the Acceptable Use Policy; or (ii) an emergency response or in compliance with a government order (including, without limitation, interruption, deactivation, or diversion of the Services or Starlink Services).

## **11.Limitation of Liability**

11.1. Clarus's liability to the Customer for negligence, delict, breach of contract, misrepresentation or any other loss as a result of any act or omission of Clarus, its officers, employees, contractors or agents, shall not exceed the lesser of £1,000,000 or 100% of the total Service Fees paid by the Customer under this Agreement.

11.2. Insofar as permitted by law neither Clarus nor Starlink shall have any liability for any loss or damage which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, delict (including negligence) or otherwise howsoever arising (including in respect of any materials, information or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer), which fall within any of the following categories:

- a) special, incidental, consequential or indirect damages, even though Clarus or Starlink were aware of the circumstances in which such special damages could arise;
- b) loss of revenue or profits;
- c) loss of anticipated savings;
- d) loss of business opportunity;
- e) loss of agreements or contracts;
- f) loss of or goodwill;
- g) loss of or damage to data;
- h) loss of use or corruption of data, software or information;
- i) work stoppage;
- j) computer failure;

- k) data security breach;
- l) malfunction; and
- m) loss or damage arising out of or related to this Agreement, the Services, Equipment, Starlink Services or Starlink Kit, associated services of the installation, repair or removal thereof.

11.3. The exclusions in Clauses 11.1 and 11.2 shall apply to the fullest extent permissible at law but Clarus does not exclude liability for:

- a) death or personal injury caused by the negligence of Clarus, its officers, employees, contractors or agents; or
- b) any other liability which cannot be excluded by law.

11.4. Clarus shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Customer or arising from any cause beyond Clarus's reasonable control.

11.5. The Customer agrees that, in entering into this Agreement, it shall not be entitled to rely on any representations (whether written or oral) of any kind or of any person and Clarus shall have no liability otherwise than pursuant to the express terms of this Agreement.

11.6. The Customer accepts that Clarus is in no way liable for any malware or other contaminants which enter the Customer's email system or computer network.

11.7. Clarus shall not be liable for any interruptions to the Services or Outages arising directly or indirectly from:-

- a) interruptions to the flow of data to or from the internet;
- b) changes, updates or repairs to the network or the Services or Equipment subject to Clarus taking reasonable measures to minimise the interruptions/outages that may be caused by such change;
- c) the effects of the failure or interruption of services provided by third parties;
- d) any actions or omissions of the Customer (including, without limitation, breach of the Customer's obligations set out in this Agreement) or any third parties; or
- e) defects with the Customer's equipment and/or third-party equipment.

## **12. Sub-contracting**

12.1. Clarus shall be entitled to sub-contract the whole or any part of its obligations hereunder to any third party but shall remain liable as if it were performing the Services itself.

12.2. Nothing in this Agreement is intended to nor shall be deemed to establish any partnership or joint venture between the parties, constitute any party the agent of the other or authorise any party to make or enter into any commitments for or on behalf of the other save insofar as expressly provided herein.

## **13. Intellectual Property Rights**

13.1. Without prejudice to the Customer's rights in its own materials, the parties hereby agree that the Customer shall not acquire any Intellectual Property Rights whatsoever in respect of the Services, Equipment or any documentation, materials, software or hardware used by Clarus in connection with or related to the provision of the Services

hereunder. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Clarus to the Customer.

- 13.2. All Intellectual Property rights of Clarus are deemed Confidential Information of Clarus.
- 13.3. Clarus warrants that it has all necessary right, title and interest to enable the Customer to benefit from the Services and Equipment in accordance with this Agreement.
- 13.4. The Customer hereby grants to Clarus a non-exclusive, royalty-free, world-wide licence during the Term to use, copy, reproduce, and manipulate data provided by the Customer or resulting from the Services for the purposes of using the data for the provision of the Services.
- 13.5. The Customer hereby grants to Clarus and its affiliates an irrevocable, perpetual, non-exclusive, royalty-free (for no additional remuneration whatsoever) licence to any System Data in an anonymised manner for (a) all purposes for which Clarus and/or its affiliates do business; (b) use for purposes of product and service enhancements and/or developments; and (c) use in any other commercial manner.

#### **14. Termination**

- 14.1. For the purposes of this Agreement, the following events shall be deemed "Acts of Default":
  - a) if the Customer fails to pay any monies due pursuant to this Agreement within 7 days of the due date therefor;
  - b) if a party commits any material breach of any clause of this Agreement (other than one falling under Clause 14.1(a)) above) and which, in the case of a breach capable of being remedied, shall not have been remedied within 14 days of a written request by the other party to remedy the same; and
  - c) if a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to a bankruptcy petition or order or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 14.2. If the Customer commits an Act of Default, then Clarus may forthwith suspend the provision of the Services hereunder (or any of them or any part of them) and no such suspension shall be deemed a breach of any term or provision of this Agreement.
- 14.3. If either party commits an Act of Default, the other party may terminate this Agreement immediately by giving notice in writing to the other party.
- 14.4. Clarus shall have the right, without prejudice to its other rights or remedies, to terminate or suspend all or a portion of your access to the Services or this Agreement immediately by notice to the Customer if:
  - a) the Customer undergoes a change of control which does not result in control passing to a company that, immediately prior to the change in question, was an Affiliate of the Customer;

- b) the Customer sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity;
- c) the Customer disputes the ownership or validity of Clarus's Intellectual Property Rights;
- d) the Customer violates the Acceptable Use Policy;
- e) Clarus receives any request and/or order from law enforcement, a judicial body, or other government agency;
- f) any unexpected technical or security issues or problems, including but not limited to a material malfunction of the Starlink network, software or hardware; or
- g) the Customer participates in fraudulent, abusive, immoral or illegal activities.

14.5. In the event that Clarus is no longer able to provide the Services, Starlink Services Equipment or Starlink Kit for any reason, including expiration, termination or cancellation of its agreement with Starlink under which the applicable Starlink Services or Starlink Kit are resold to the Customer ("the Supply Agreement"), this Agreement shall immediately terminate unless otherwise agreed to in writing by the parties.

14.6. Notwithstanding the terms of clause 14.4 Clarus shall use reasonable endeavours to provide the Customer with prior written notice of the expiration, termination or cancellation of the Supply Agreement as soon as same is within the reasonable knowledge of Clarus.

14.7. On termination of the Supply Agreement, Starlink may elect to provide the Starlink Services and Starlink Kit direct to the Customer, and Clarus shall be entitled to provide Starlink with Customer contact details for this purpose.

14.8. On termination of the Agreement for any reason during any month or part thereof that the Customer has paid for in advance, no refund or other compensation shall be provided to the Customer and Clarus shall have no other liability to the Customer whatsoever for any loss, damage, expense, liability or other cost howsoever incurred and whether directly or indirectly caused as a result of said.

14.9. In the event of termination of this Agreement:-

- a) the Customer agrees promptly to pay to Clarus all outstanding payments;
- b) the Customer's right to receive the Services and the Starlink Services shall cease automatically; and
- c) each party shall immediately return to the other all property and materials containing Confidential Information belonging to the other.

14.10. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

14.11. Clauses 1, 10, 11.1 to 11.2, 14.11, 15; 17, 21, 22 and 23 of this Agreement shall survive and continue to have effect notwithstanding the termination of this Agreement.

## **15. Confidentiality and Customer Information**

15.1. Where either party ("the Receiving Party") receives Confidential Information from the other party, pursuant to this Agreement, that party shall, during the term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other party ("Disclosing Party") disclose to any

third party, Confidential Information save that the Receiving Party may disclose Confidential Information to those of its employees, agents and sub-contractors involved in the provision or receipt of the Services who have a need to know same and to their respective professional advisers, where reasonably necessary and provided same are subject to duties of confidentiality.

- 15.2. The Customer agrees that if it is served with any form of legal process that would require disclosure of any Confidential Information, it shall, if permitted by law, before taking any action, immediately notify Clarus who shall have the right to seek to quash or limit the scope of such process.
- 15.3. The provisions of Clause 15.1 above shall not apply to the whole or any part of the Confidential Information to the extent that it is:
- a) trivial or obvious;
  - b) already in the Receiving Party's possession without duty of confidentiality on the date of its disclosure to it by the Disclosing Party;
  - c) is independently developed by the Receiving Party, its officers, employees, agents or contractors;
  - d) in the public domain other than as a result of a breach of this clause; or
  - e) to the extent that disclosure of such information may be required by any governmental agency or by operation of law and, in either such case, the Receiving Party required to make such disclosure shall, unless legally precluded from doing so, use reasonable endeavours to notify the Disclosing Party of such requirement prior to making the disclosure.
- 15.4. The parties undertake to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of the Information and the provisions of these Clauses 15.1 to 15.9 inclusive.
- 15.5. For the avoidance of doubt, all information belonging to one party shall remain at all times the exclusive property of that party and may only be used by the other in order to fulfil its obligations pursuant hereto.
- 15.6. Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or other loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 15.7. Upon termination of this Agreement, or upon the written request of the other party, the party who was supplied with the Confidential Information will return the Confidential Information within 28 days of such request. Each party may retain one copy of the Confidential Information but only if it requires to hold such information to ensure legal compliance with its obligations under this Agreement including regulatory compliance.
- 15.8. The Customer acknowledges and agrees that Starlink and/or Clarus may (a) share with each other any and all relevant information, including, but not limited to, Confidential Information of the Customer relating to this Agreement and/or the Starlink Services provided herein; and (b) request the Customer to take reasonable action against to prevent a breach of this Agreement.
- 15.9. Notwithstanding the provisions of clauses 15.1 to 15.9, Clarus shall be entitled to retain all books, records and accounts with respect to the Customer including this Agreement

and all other relevant contracts applicable to the Services for the purposes of accounting to Starlink and as required by law.

### **16. Force Majeure**

- 16.1. Neither party hereto shall be liable for any delay in performance of or breach of its obligations hereunder, except in respect of payment, resulting from a Force Majeure Event. Any time limit or estimate for a party to perform any act hereunder shall be suspended during Force Majeure Event.
- 16.2. Each of the parties agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event, the date and extent of such delay and the estimated duration thereof.
- 16.3. Each of the parties shall use reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement.
- 16.4. If a default arising from a Force Majeure Event continues for more than 28 days, then the party not in default shall be entitled to terminate this Agreement with immediate effect on giving written notice to the other party. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event, but such termination shall not affect any accrued rights or obligations of either party.

### **17. Waiver**

- 17.1. The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any subsequent breach of the same or other provisions nor shall any delay or omission on the part of either party in exercising or availing itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

### **18. Unenforceability and Severability**

- 18.1. If any provision of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such finding shall remain in full force and effect. Where possible, the parties shall, by agreement, substitute for any invalid or unenforceable provision, a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

### **19. Entire Agreement**

- 19.1. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof.
- 19.2. No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.
- 19.3. The Parties agree that provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and are hereby expressly and entirely excluded.

### **20. Successors and Assignees**

20.1. This Agreement shall be binding upon and enure for the benefit of the successors in title of the parties hereto.

20.2. The Customer shall not be entitled to assign this Agreement, sub-licence or sub-contract all or any of its rights and obligations hereunder.

**21.Non-Solicitation**

21.1. Neither party shall, without the prior written consent of the other party, at any time from the Commencement Date to the expiry of 12 months after the expiry of the Term, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of that party.

**22.Third Party Rights**

22.1. Save as expressly provided for in this Agreement, no clause or term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement.

**23.Choice of Law and Jurisdiction**

23.1. This Agreement shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

## **SCHEDULE 1**

### **Acceptable Use Policy**

#### **Fair Access**

- a) To ensure that all of Clarus's Customers have equitable access to the Services and to avoid unfair and disruptive use of the Services, Clarus has implemented a Fair Access Policy ("FAP"), which is a part of the Acceptable Use Policy and establishes an equitable balance in accessing and using the capacity of the Services.
- b) Clarus has the right to (a) measure and monitor the Services for upload and download activity; (b) restrict applications that cause disruption of data transfer rates and poor performance of the Services; and (c) use other traffic management, shaping and prioritisation at its discretion. Clarus may reduce data speeds at any time if any of the Equipment data usage exceeds an identified threshold with such data usage calculated based on a combination of all inbound and outbound data from the Equipment. If any Customer or Equipment engages in excessive upload and download data activity and contributes to any disruption of the Services, shall be entitled to temporarily restrict the transfer rate at which such Equipment and/or Customer can send and receive data over the Services without liability. In most cases, the restriction on the Equipment and/or Customer transfer rate will last until the end of the then-current data allowance period for the Services.
- c) If the Equipment and/or Customer again engages in excessive upload and download data activity following the restoration of normal transfer rate after commencement of a new data allowance period, Clarus may further temporarily restrict such transfer rate. Excessive use shall be determined by Clarus in its sole discretion, based on the limits associated with the Equipment and/or the Services and pro-rata allocation of network capacity across all of Clarus's sub-distributors and each of Clarus's (and its sub-distributor's) Customers simultaneously using the Services at any point in time. Excessive use includes, without limitation, the use of web cameras, voice or VoIP services, peer to peer file sharing or gaming software applications, streaming media and excessively large file downloads or uploads. Restriction of the transfer rate permitted to particular Equipment and/or Customers as described above will reduce the speed at which such Equipment and/or Customer can upload and download data, but will not altogether prevent the use of the Services by such Equipment and/or Customer.

#### **Content and Security**

- d) The Customer acknowledges and agrees that (a) access to the internet and all messages/content through the Services is done so at Customer's sole risk and the Customer assumes all responsibility, risk and liability for any claims, liability or damages with respect to the Services (1) for the security, confidentiality and integrity of such messages/content; (2) for the application of security policies designed to prevent unwanted or unauthorised activity or access thereto; and/or (3) arising from any use of and/or access to the internet through its account by any person (even if such use was unauthorised) and, with respect to the foregoing subsections (1) to (3), Customer shall take responsibility for the implementation of suitable data archiving or other housekeeping activities which could minimise the effect of any of the foregoing; (b) the reliability, availability, legality, performance and other aspects of resources and content accessed through the internet are beyond Clarus's reasonable control and are not in any way warranted, endorsed or supported by Clarus and accordingly Clarus is

not responsible or liable for any content, advertising, products, or other materials on or available from sites or resources available through the Services, including, without limitation, the absence of bugs, errors or viruses, accuracy or reliability of any material or claims contained therein; (c) safeguards related to copyright, ownership, appropriateness, reliability, legality and integrity of content may be unsuitable, insufficient or entirely absent with respect to the internet and content accessible through it; (d) the internet is an inherently insecure medium and understands that Clarus does not represent, warrant, covenant and/or guarantee the security or integrity of any communications made or received using the Services; and (e) it will ensure that it has the legal authority (based on copyright, trade mark, contract, or other body of law) for the transmission and duplication of any programming, content, or other materials that it transmits, directly or indirectly, via the Services.

### **Prohibited Activities**

- e) As determined by Clarus (in its sole discretion), and in addition to the foregoing subsections (i) and (ii) above, Customer shall not undertake, or attempt to undertake the Services in a manner that is (a) in breach of the terms of this Agreement; (b) inconsistent with the rights of others or interferes with the Equipment, Services, Starlink Services, Starlink Kit or users thereof; and/or (c) unethical, unlawful, abusive, excessive, fraudulent or otherwise an unacceptable use, including, without limitation, the following:
- i. posting, disseminating, spamming, storing or transmitting unsolicited messages or unsolicited e-mail (commercial or otherwise);
  - ii. posting, uploading, disseminating, storing or transmitting material of any kind or nature that, to a reasonable person, may be abusive, obscene, harmful, hateful, pornographic, defamatory, harassing, deceptive, fraudulent, invasive of another's privacy, grossly offensive, vulgar, threatening, malicious, a nuisance, racially or ethnically offensive or otherwise objectionable;
  - iii. hacking into, breaching, scanning vulnerability of/or unauthorised access to data, systems or networks;
  - iv. unauthorised monitoring of data or traffic on any network system;
  - v. transmitting viruses and/or interfering or disrupting service to any other user, host or network;
  - vi. forging of any TCP-IP packet header or any part of the header information in an e-mail or newsgroup posting;
  - vii. relaying mail via another site's mail server without express permission of that site;
  - viii. impersonating any person or entity, including any Clarus employee or representative;
  - ix. disclosing passwords or other means for accessing the Services, operating and provisioning platforms, APIs or network to any third party, or otherwise facilitating unauthorised access thereto;
  - x. using the Services in any jurisdiction where they are not licensed or authorised;
  - xi. avoiding fees or charges for the Services;
  - xii. using any VoIP service for forwarding toll-free numbers internationally;
  - xiii. duplicating, using before or after the valid viewing dates, or otherwise violating the copyright and distribution agreements for content available through the Services; and/or
  - xiv. directly or indirectly bring disrepute to or in any manner impair or damage Clarus or the image, reputation or goodwill associated with Clarus.

## SCHEDULE 2

### Service Level Agreement

#### General Contact Services – As original agreement

| Process  | Service Hours   | Available Contact Methods                            | Completion Time   |
|--|---|--|---|
| Site Survey  | Mon - Fri<br>8.30am – 6.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Up to 10 Working Days<br>from receipt of request                  |
| Desk Based Site<br>Survey  | Mon - Fri<br>8.30am – 5.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Up to 72 hours from<br>receipt of request                         |
| Hardware<br>Distribution   | Mon - Fri<br>8.30am – 5.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Up To 10 Working<br>Days from receipt of<br>request **            |
| Installation   | Mon - Fri<br>8.30am – 5.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Up to 10 Working<br>Days from delivery of<br>equipment to site ** |
| Field Engineer Call Out<br>Covers equipment<br>relocation, additional<br>components and<br>general support                                 | Mon - Fri<br>8.30am – 5.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Up to 10 Working<br>days from request<br>received                 |
| Expedited Field Engineer<br>Call Out<br>Specifically for<br>emergency<br>situations to address<br>Clarus hardware,<br>software or network. | Mon - Sat<br>8.30am – 6pm<br>excluding UK Bank<br>Holidays    | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Up to 5 working days<br>from request<br>received                  |
| Technical Support  | Mon - Fri<br>8.30am – 5.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Response within 2<br>hours from receipt of<br>request             |
| Cancellation Notification  | Mon - Fri<br>8.30am – 5.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | Processed 5 days<br>from receipt of<br>confirmation               |
| System<br>Decommissioning  | Mon - Fri<br>8.30am – 5.00pm<br>excluding UK Bank<br>Holidays | +44 330 1244 805<br>helpdesk@clarus-<br>networks.com | 30 days from receipt<br>of written<br>confirmation                |

\*\* Based on UK Stock Levels