

## HBT Hosting Services Terms and Conditions

This Hosting Services Terms and Conditions ("**Agreement**") is hereby entered into and agreed upon by you, either an individual or an entity ("**You**" or "**Customer**") and H.B. Telecom (UK) Limited ("**HBT**") for the Services (as Defined below). This Agreement is made and entered into as of the date that You accept it as Defined below (the "**Commencement Date**").

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING THIS AGREEMENT OR AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND HBT AND SETS FORTH THE TERMS THAT GOVERN THE SERVICES PROVIDED TO YOU HEREUNDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THIS AGREEMENT WILL NOT BE ACCEPTED AND WILL NOT BE A PART OF THIS AGREEMENT.

### THE PARTIES HEREBY AGREE AS FOLLOWS:

#### 1. Interpretation

##### 1.1. Definitions

In this Agreement, unless the context otherwise requires, the expressions and terms listed in Schedule 1 (**Definitions**) shall have the meaning stated in that Schedule.

##### 1.2. Construction of certain references

1.2.1 In this Agreement where the context admits:

- 1.2.1.1 references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions of which they are re-enactments (whether with or without modification);
- 1.2.1.2 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to Agreement includes the Schedules.
- 1.2.1.3 this Agreement shall be binding on, and inure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.

##### 1.3. Precedence

Save for where the Order Form states otherwise, if there is an inconsistency between the Agreement, the Schedules or an Order Form, the following order of precedence shall apply to this Agreement and the documents referred to in it:

- 1.3.1 the Clauses in the main body of the Agreement;
- 1.3.2 the Schedules; and
- 1.3.3 the relevant Order Form.

Save where Clauses in the Agreement and its Schedules are specifically dis-applied or varied in any special conditions for a particular Order Form, in such a case, the special conditions in the relevant Order Form shall take precedence over the Clauses in the Agreement and the Schedules, if there is an inconsistency between the special conditions and the Clauses in the Agreement and the Schedules, solely in respect of the relevant Order Form.

#### 2. Term of this Agreement

2.1 This Agreement shall commence on the Commencement Date and shall continue (subject to earlier

termination in accordance with the terms of this Agreement) for the Initial Contract Period.

- 2.2 Unless one of the Parties provides written notice of termination to the other Party on or before ninety (90) days prior to the expiration of the Initial Contract Period, the Agreement shall automatically continue in full force thereafter on a rolling annual basis of twelve (12) months each (each a "Subsequent Renewal Period(s)"), until a Party provides written notice of termination in accordance with clause 19.6 herein.
- 2.3 HBT shall use its reasonable endeavours to activate and make the Services available by the Start Date. However, the Start Date and any other dates given in this Contract are estimates provided for planning purposes only. HBT shall have no liability for any failure to meet the Start Date or any other date as, save as expressly provided elsewhere in this Contract, time is not of the essence in relation to any matter.
- 2.4 No order shall be binding upon HBT unless and until accepted by HBT.

### **3. HBT Obligations**

- 3.1 HBT shall provide the Services and the Customer Services in accordance with the terms of this Contract. The Services shall commence on the Activation Date notified by HBT.
- 3.2 The Services and Customer Services are provided solely for use by the Customer in the course of the Customer's business.
- 3.3 HBT shall use reasonable skill and care when providing the Services and Customer Services but does not guarantee that the Services shall be continuously available to the Customer or free from Service Failures.
- 3.4 HBT shall not be obliged to provide the Services to the Customer if the Customer enters into this Contract otherwise than in the course of its business or uses the Services otherwise than in the course of its business, if the Customer is not located in a geographic location where the Services can be received, or where there is a technical reason why the Customer would not be able to receive the Services.
- 3.5 The Customer must immediately report any fault to HBT via the Service Desk providing sufficient information to enable HBT to investigate the problem. HBT shall log the time of receipt of all such reports.
- 3.6 Where HBT spends time investigating a fault reported by the Customer and conclude that there has been no Service Failure, HBT reserves the right to charge the Customer for all reasonable costs and expenses incurred in investigating the report and the Customer agrees to pay such charges.

### **4. Customer Obligations**

- 4.1 The Customer shall only use the Services in accordance with the terms of this Contract, the Acceptable Use Policy, any relevant manuals provided by HBT from time to time and any other reasonable operating instructions given to the Customer by HBT.
- 4.2 The Customer agrees not to use the Services in a way which would:
- 4.2.1 contravene or cause HBT and/or the Hosting Service Provider to contravene any laws or regulations including, but not limited to, the Act, and any licence under the Act which is applicable to HBT and/or the Hosting Service Provider;
- 4.2.2 contravene the Acceptable Use Policy;

- 4.2.3 cause a material degradation of the Services to any other customer of HBT and/or the Hosting Service Provider;
  - 4.2.4 contravene any reasonable operating instructions or other instructions (including, without limitation, any manual) which HBT may provide from time to time;
  - 4.2.5 involve the sending of unsolicited marketing or advertising materials;
  - 4.2.6 result in the transmission or storage of any material which is intended to be a hoax call to emergency services or the sending of any pornographic, obscene or abusive, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, confidential information or privacy; or
  - 4.2.7 breach or cause HBT and/or the Hosting Service Provider to breach any Applicable Data Protection Laws.
- 4.3 The Customer shall:
- 4.3.1 not install, use, copy, access or distribute any Software (including Third Party Software), nor allow any third party to do so, nor appoint any reseller to do so, except as expressly permitted in accordance with this Contract or as otherwise authorised by HBT and (in respect of Third Party Software) the relevant Licensor;
  - 4.3.2 not use the Services in respect of hazardous environments requiring fail-safe performance in which the failure of the Services or Software could lead to death, personal injury or severe physical, property or environmental damage. Examples of these environments include the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control or life support systems;
  - 4.3.3 not separate the components of the Software by installing them on different servers, or by upgrading or downloading them at different times; and
  - 4.3.4 not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Software.
- 4.4 All Software made available for use by the Customer pursuant to this Contract is provided subject to the applicable Licence Terms. The Customer shall observe and comply with the applicable Licence Terms, including any restrictions on the use, copying, decompilation and transfer of the Software.
- 4.5 Notwithstanding any provision to the contrary, the Software licence ("**Software Licence**") may be terminated by the manufacturer, supplier or licensor in accordance with its terms; and in addition (without prejudice to the generality of the foregoing) the Customer shall ensure that any Software is only used during the continuance of this Contract in accordance with a valid and subsisting Software Licence.
- 4.6 Except to the extent and in the circumstances expressly required to be permitted by law, the Customer shall ensure that neither it nor any third party shall copy, alter, modify, adapt, translate, decompile, disassemble or reverse engineer the Software.

- 4.7 The Customer agrees to indemnify, keep indemnified and hold harmless HBT and the Hosting Service Provider from and against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by HBT and/or the Hosting Service Provider arising from any breach by the Customer of its obligations under this Contract including this clause 4, and for all costs and expenses reasonably incurred by HBT and/or the Hosting Service Provider in investigating and defending any such claims, proceedings or threatened proceedings; such indemnity to continue notwithstanding the termination of this agreement by either party.

## **5. Charges and Payment**

- 5.1 The Customer shall pay HBT the Charges as specified in this Contract and as subsequently varied pursuant to this Contract. Charges shall be payable by the Customer with effect from the Activation Date.
- 5.2 In relation to each Statement of Work, if applicable to a specific project, the Customer shall pay to HBT the Professional Services Charges set out in such Statement of Work at the times set out in such Statement of Work. In absence of any express time for payment of the Professional Service Charges being set out in the Statement of Work, HBT shall be entitled to invoice the Customer for the Professional Services upon completion of the relevant Professional Services and the Customer shall pay such invoice in accordance with clause 5.8.
- 5.3 HBT may vary all or any of the Charges at any time on giving not less than thirty (30) days' notice to the Customer. This notice may be included in an invoice to the Customer. Such increase shall not be more than the Retail Price Index (RPI) applicable at that time plus 4%.
- 5.4 HBT may at any time on notice to the Customer amend any terms as to payment so as to ensure that it is paid the Charges on or prior to the date on which HBT is to pay any Third Party Service Provider in respect of the Services or goods to which such charges relate.
- 5.5 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in HBT invoices at the applicable rate(s). Payment shall be by direct debit and a fee of £20.00 per incident for any cancelled, dishonoured or failed Direct Debits or cheques may be applied. If payment is not made by direct debit, an administrative charge of £5 per month shall be applied.
- 5.6 HBT shall issue invoices for the Services in accordance with the billing dates specified in this Contract. Any delay by HBT in invoicing any Charges shall not prohibit HBT from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay for the same.
- 5.7 The Customer shall pay the Charges within fourteen (14) days of the date of the relevant HBT invoice, unless otherwise agreed by HBT. The Customer shall not be entitled to set-off, contra or withhold any payment due to HBT against any sums of whatsoever nature that are due to the Customer from HBT or that the Customer claims are due from HBT, and time of payment of all sums under this Contract is of the essence.
- 5.8 Where Charges are not paid by the Customer in accordance with this clause 5, HBT may require the Customer to pay all sums due under this Contract on demand, and reserve the right to charge Interest on all amounts overdue from the Customer on a daily basis (before as well as after any judgement) until the date of payment, at NatWest Bank base rate plus four percent (4%). Alternatively, if any sum owed by the Customer to HBT under the Contract or any other contract with HBT is not paid by the due date, HBT may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with HBT.

- 5.9 If you believe all or any part of an invoice is in error, you must notify HBT Communications within 6-months (180) days of your receipt of the invoice. If you fail to do so, HBT Communications will not be required to make any adjustment to the invoice, and you shall be deemed to have waived any right to contest the invoice.

## **6. Professional Services**

- 6.1 HBT shall, or shall procure that its contractor shall, provide the Professional Services as agreed between HBT and the Customer and as set out in a Statement of Work.
- 6.2 Any such Professional Services shall be set out in a sequentially numbered Statement of Work setting out:
- 6.2.1 the scope of the services to be provided (or procured) by HBT;
  - 6.2.2 the Deliverables to be delivered to HBT Customer;
  - 6.2.3 the identity of any specific individual(s) to be allocated to the provision of the Professional Services;
  - 6.2.4 the period during which the Professional Services are to be provided;
  - 6.2.5 the specification for the Professional Services;
  - 6.2.6 any acceptance tests to be carried out in respect of the Professional Services; and
  - 6.2.7 the Charges to be paid to HBT in respect of those Professional Services.
- 6.3 If applicable, no Statement of Work shall be binding until approved in writing by the Customer and signed by a duly authorised representative of both parties.
- 6.4 HBT shall perform (or procure the provision of) the Professional Services and deliver the Deliverables in each case in accordance with the terms of this Contract and shall use all reasonable endeavours to do so in accordance with any timescales identified in the relevant Statement of Work.
- 6.5 HBT shall perform (or shall procure the provision of) the Professional Services in a workmanlike and professional manner and exercise reasonable skill and care.
- 6.6 The Customer may, by written notice to HBT, cancel a Statement of Work at any time prior to the commencement of the Professional Services, the subject of that Statement of Work. If such notice is received by HBT more than 30 days prior the scheduled commencement date of the Professional Services, no charges or other sums shall be payable by the Customer in respect of the cancelled Professional Services. In all other cases, cancellation charges may be invoiced by HBT as set out in the Statement of Work (or as otherwise communicated to the Customer in writing) and such invoices shall be payable by the Customer within 30 days of receipt.
- 6.7 HBT hereby grants (or shall procure the grant of) to the Customer a non-exclusive, personal licence to use, maintain, update and/or copy the Deliverables to the extent necessary to gain the full benefit of the Services, such licence to terminate automatically upon the termination of this Contract.

## **7. Access to Premises and Information**

- 7.1 The Customer shall provide to HBT, or such third party nominated by HBT, such information and documentation relating to the implementation, maintenance and support and/or administration of the Services as is necessary to enable HBT and/or its contractors to implement, maintain and support and administer the provision of those Services.
- 7.2 The Customer shall ensure that HBT, its contractors and/or any third party providing the Professional Services are provided with such access to the computer equipment, software and network links owned by, licensed to and/or used by the Customer as may be reasonably necessary for the implementation, maintenance and support, administration and/or other performance of the Services.
- 7.3 The Customer shall ensure, prior to the date on which HBT, its contractors and/or any third party providing the Professional Services commence the provision of any services in connection with the implementation, maintenance and support and/or administration of any Services at the premises of the Customer that:
- 7.3.1 such premises provide adequate working space and facilities as HBT, its contractors and/or any third party providing the Professional Services may reasonably require to carry out such services;
- 7.3.2 it has obtained all necessary consents to enable HBT, its contractors and/or any third party providing the Professional Services to enter onto and remain upon the premises to carry out such services; and
- 7.3.3 the Customer shall effect and maintain throughout the provision of such services insurance cover for the benefit of HBT, its contractors and/or any third party providing the Professional Services and their respective employees, agents and contractors against any and all reasonably foreseeable risks in providing the Professional Services at such premises on terms reasonably acceptable to HBT and/or its contractors.

## **8. Equipment**

- 8.1 With the exception of HBT Equipment, the Customer shall be responsible for providing all necessary hardware, software, network facilities and telecommunications services to access and make use of the Services provided by HBT.
- 8.2 The Customer shall ensure that the Equipment;
- 8.2.1 are capable of enabling access to the public switched telecommunications network using exchange lines provided by BT or alternative carrier;
- 8.2.2 are supplied and maintained in a safe condition and good working order;
- 8.2.3 meet the minimum technical specifications required to be compatible with the Service; and
- 8.2.4 conform at all times with the relevant standard designated by all relevant legislation, including the Act and all applicable regulations, instructions and orders.
- 8.3 HBT shall not be under any obligation to connect or keep connected any Equipment if it does not so conform or if it is liable to cause or does cause death, personal injury or damage to property or to impair the quality of the Services provided by HBT.
- 8.4 In respect of any HBT Equipment, such HBT Equipment is provided to the Customer subject to HBT's

then current standard terms and conditions for the supply of such HBT Equipment as communicated to the Customer prior to the delivery of such HBT Equipment.

## **9. Security of the Services**

- 9.1 HBT provides no guarantee or warranty as to the security of the Services and the Customer shall indemnify, keep indemnified and hold harmless HBT and the Hosting Service Provider, and shall pay to HBT such sums as would if paid to the Hosting Service Provider indemnify in full, keep indemnified and hold harmless the Hosting Service Provider from and against any claim or demand of whatsoever nature and howsoever arising as a result of the said security or any failure thereof.
- 9.2 Where the Customer is aware or becomes aware of any matter which the Customer knows or ought reasonably to be expected to know constitutes a threat to the security of the Services, then the Customer has a duty pursuant to this Contract immediately to advise HBT of such matter.
- 9.3 The Customer is responsible for all use and misuse of any passwords giving access to the Services.
- 9.4 HBT and its Third Party Service Providers and/or other sub-contractors shall be entitled to inspect and monitor from time to time all usage being made of the Services including communications being made and received to verify compliance with this Contract.

## **10. Termination**

- 10.1 If at any time during the Term of the Agreement:
- 10.1.1 a Party commits a material breach of this Agreement and in case of a breach which is capable of remedy, fails to remedy the breach within thirty (30) days of written notice, or
- 10.1.2 a Party becomes insolvent,
- then the other Party shall have the right to terminate this Agreement forthwith.
- 10.2 HBT shall also have the right to terminate this Agreement immediately upon written notice if:
- 10.2.1 Customer fails to timely pay any and all undisputed amounts due and Customer fails to cure such non-payment within ten (10) days after receiving written notice of such non-payment from HBT,
- 10.2.2 any of HBT's Head Contracts are terminated due to the Customer's breach;
- 10.2.3 Customer fails to comply with the Acceptable Use Policy;
- 10.2.4 there is a change of control of the Customer;
- 10.2.5 there is a governmental prohibition or required alteration of the Services provided that necessitates such termination,
- 10.2.6 the Customer fails to comply with any of the Licence Terms;
- 10.2.7 HBT is informed by any Third party Service Provider that such Third Party Service Provider is required to cease any Third Party Services (in whole or in part) by a competent regulatory authority (e.g., pursuant to a withdrawal, revocation or non-renewal of authorisations);
- 10.2.8 any Third Party Service Provider supporting the Services ceases to do so for whatever reason;

- 10.2.9 any agreement between the Hosting Service Provider and any of its Licensors is terminated (for any reason), or varied in a manner that means HBT can no longer comply with any provision of this Contract;
- 10.2.10 the Head Agreement is terminated (for any reason);
- 10.2.11 any Third Party Services or any Third Party Software cease to be provided (in whole or in part) by any Third Party Service Provider to HBT or for use or resale by HBT for whatever reason;
- 10.2.12 any Third Party Service Provider changes the terms of its provision of telecommunications services to HBT for the Services beyond the reasonable control of HBT;
- 10.2.13 any Third Party Services which are essential to the provision of the Services ceases to be available at all or at an appropriate capacity and there shall not be available any suitable replacement;
- 10.2.14 any authorisation licence or other permission for HBT or any Third Party Service Provider under the Act is revoked, withdrawn or not renewed for whatever reason; or
- 10.2.15 HBT is required to terminate this Contract by the Hosting Service Provider as a result of the occurrence of any event or default of the Customer that would entitle HBT to terminate this Contract under this clause 10.
- 10.3 In the event of termination of this Contract by HBT pursuant to Clauses 10.1 or 10.2 during the Initial Contract Period the Customer shall be deemed to have repudiated this Contract and shall pay to HBT, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Initial Contract Period had the termination not taken place, less an accelerated payment discount at the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt. The provisions of this clause 3 are without prejudice to any other rights and remedies of HBT.
- 10.4 Where the Customer purports to terminate this Contract after expiry of the Initial Contract Period other than in accordance with clause 2.2 or 10.2, HBT shall be entitled (without prejudice to any of its other rights) to treat such purported termination as a repudiatory breach and accept such repudiation by terminating this Contract in which case the Customer shall pay to HBT an amount equivalent to the cost of ninety (90) days' Charges which the Customer would have incurred had the Customer given ninety (90) days' prior written notice of termination in accordance with clause 2.2.
- 10.5 Where the Customer purports to terminate this Contract during the Initial Contract Period other than in accordance with clause 10.2, HBT shall be entitled (without prejudice to any of its other rights and remedies) to treat such purported termination as a repudiatory breach and accept such repudiation by terminating this Contract in which case the Customer shall pay to HBT, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Initial Contract Period had the termination not taken place, less an accelerated payment discount at the rate of the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt.
- 10.6 The Customer shall indemnify, keep indemnified and hold harmless HBT and the Hosting Service Provider from and against any claim or demand of whatsoever nature and howsoever arising against HBT and/or Hosting Service Provider as a result of termination pursuant to this clause 10.
- 10.7 Upon termination of this Contract each party shall return to the other party any Confidential



Information of the other which it has in its possession.

- 10.8 Clause 4 (Customer Obligations), Clause 5 (Charges and Payment), Clause 13 (Intellectual Property), Clause 14 (Information and Confidentiality), Clause 15 (Data Protection), Clause 16 (Limitation of Liability) and Clause 17 (Force Majeure) and other terms and conditions forming part of the Contract which are agreed by the Parties to survive termination or which by their nature are clearly intended by the Parties to survive termination, shall survive and continue in full force and effect.

## **11. Suspension of Services**

- 11.1 HBT reserves the right to interrupt the service or change the technical specification of the Services for operational reasons (such as maintenance or service upgrades), because of an emergency or as required to conform with any applicable safety or other statutory requirements. In these circumstances where possible HBT will give notice to the Customer of such interruption however, the Customer shall have no claim against HBT for any such interruption.

- 11.2 HBT may suspend the provision of the Services or any part thereof in its absolute discretion and without notice if:

11.2.1 the Customer fails, or HBT believes the Customer will fail, to meet any of its obligations under this Contract including, but not limited to failure to make payment pursuant to clause 5, or failure to comply with the Acceptable Use Policy;

11.2.2 technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;

11.2.3 in the opinion of HBT the Customer's conduct may result in the breach of any law or is otherwise prejudicial to the interests of HBT;

11.2.4 in the opinion of HBT it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance;

11.2.5 HBT is obliged to comply with any order, instruction or request of a competent governmental, emergency services organisation or regulatory or other authority;

11.2.6 HBT is entitled to terminate this Contract under clauses 10 or 17;

11.2.7 any Third Party Service Provider temporarily suspends or takes out of use the Services for operational purposes; or

11.2.8 HBT is required to suspend the Services by the Hosting Service Provider as a result of the occurrence of any event or default of the Customer that would entitle HBT to suspend the Services under this clause 11.

- 11.3 HBT shall, where practical, give the Customer notice of intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 11.2.2, 11.2.4. or 11.2.5 above, shall restore the Services as soon as HBT is reasonably able to do so.

- 11.4 If HBT exercises its right to suspend the Services this shall not restrict their right to terminate this Contract.

- 11.5 The Customer shall indemnify, keep indemnified and hold harmless HBT and the Hosting Service Provider from and against any claim or demand of whatsoever nature and howsoever arising against HBT and/or Hosting Service Provider as a result of suspension pursuant to this clause.

## **12. Variation of Services**

- 12.1 HBT shall be entitled, upon giving not less than thirty (30) days' notice to the Customer where practical, to make variations and additions to the Services and these Terms and Conditions from time to time (acting reasonably) including:-

12.1.1 to improve or add to the Services;

12.1.2 to pass through any change made by any Third Party Service Provider to any Third Party Services;

12.1.3 in order to comply with any law or legal obligation (whether under common law, statute, tort or otherwise), or any change to any law or legal obligation;

12.1.4 in order to comply with any final order, provisional order, direction, notice, specification, designation or consent made by the Office of Communications; and/or

12.1.5 in order to maintain the integrity or security of the Services and/or any part of the systems use or to provide the Services.

For the avoidance of doubt, HBT shall not be obliged to give any greater notice of any changes by a Third Party Service Provider than the Third Party Service Provider gives to HBT.

- 12.2 HBT may at any time change the Services if it needs to do so to comply with any applicable safety or other statutory requirements or where the change does not materially detract from the quality or performance of the Services.

- 12.3 In relation to any Third Party Services, including any elements which are sub-contracted to or supplied by third parties, and any third party premises that may host any systems used to provide the Services, the following terms will apply:

12.3.1 HBT shall use all reasonable endeavours to monitor and supervise the supply of such Third Party Services, but except as otherwise provided in this Contract in respect of Third Party Services provided by the Hosting Service Provider, HBT shall not otherwise be responsible for or liable for any malfunction, failure, non-operation, default, or non-availability of such Third Party Services, unless due to HBT's negligence or default;

12.3.2 if the third party changes its specifications for the Third Party Services after the date of this Contract, or that third party replaces the same with a new version, or ceases to supply the same, or HBT decides to replace the same, except in respect of Third Party Services provided by the Hosting Service Provider, HBT shall be entitled (without prejudice to any of its other rights and remedies) to substitute for the Third Party Services an alternative which shall as far as is reasonably possible provide substantially the same functionality, and to make a reasonable resulting variation to the Charges and other terms of this Contract. HBT would as far as practicable pre-plan this with the Customer;

12.3.3 if the third party increases its charges for the Third Party Services, HBT shall be entitled to make

a resulting increase to the Charges to pass on the cost increase in accordance with clause 5.3;  
and

12.3.4 HBT may change the Third Party Service Provider at any time. In such case, this may involve a temporary suspension in the Service and re set-up.

### **13. Intellectual Property**

13.1 The Customer shall not use any trade names, trademarks or service marks of HBT or the Licensors without the express written consent of HBT (in respect of any trade names, trademarks or service marks owned by HBT) or the relevant Licensor (in respect of any trade names, trademarks or service marks owned by any Licensor).

13.2 The Customer must not without the express consent of the Hosting Service Provider use the Hosting Service Provider' trade names, trademarks or service marks.

13.3 Copyright in all software, documents, drawings and information supplied to the Customer in connection with this Contract remain vested in HBT or the copyright owner. Such software, documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without HBT's prior written consent and in respect of Third Party Software, the prior written consent of the relevant Licensor.

13.4 The Customer hereby grants HBT and the Hosting Service Provider a non-exclusive licence with a right to grant sub licences to use the Customer Materials solely to the extent and for the period necessary for HBT, any sub-contractor and/or any third party providing the Professional Services to perform HBT's obligations under this Contract such licence to terminate no later than the termination of this Contract. HBT shall comply with any reasonable terms, restrictions or instructions given by the Customer from time to time in relation to the use of the Customer Materials.

13.5 Where the Customer provides Customer Materials to HBT and/or any sub-contractor under or in connection with this Contract, the Customer shall indemnify and keep indemnified HBT and the Hosting Service Provider and shall pay to the Hosting Service Provider such sums as would indemnify and keep indemnified the third party contractor(s) providing the Professional Services in respect of any losses, liabilities, damages, costs and/or expenses (including reasonable legal fees) incurred by Reseller, the Hosting Service Provider and/or any of the contractors providing the Professional Services in connection with any claim, action, proceeding or demand (each whether actual, pending or threatened) that the use of the Customer Materials for the purpose for which they were provided under this Contract infringes the Intellectual Property Rights of any third party to the extent that such claim, action, proceeding or demand is due to the performance of the Services in accordance with this Contract or in accordance with the specific instructions of the Customer provided always that HBT shall:

13.5.1 give notice to the Customer of any such claim as soon as reasonably practicable upon becoming aware of the same;

13.5.2 give the Customer the conduct of the defence to any such claim and shall not at any time admit liability or otherwise attempt to settle such claim; and

13.5.3 give the Customer all assistance reasonably requested by the Customer in connection with any such claim.

### **14. Information and Confidentiality**

14.1 The Customer will provide HBT with any information which HBT may reasonably require to enable to

proceed with the performance of its obligations under this Contract.

14.2 The Customer acknowledges that HBT reserves the right to review or edit any of the Customer's information (including but not limited to information about the communications such as origin, destination, duration, route and time) or third party information which the Customer uses in connection with the Services for the purposes of any of the following:

14.2.1 performing its obligations under this Contract;

14.2.2 correcting, maintaining and improving the Services;

14.2.3 ensuring that the Customer is complying with the Acceptable Use Policy;

14.2.4 monitoring the performance of the Services including the Customer's usage;

14.2.5 collating information to provide non-specific statistics to assist in HBT or any Reseller third party supplier's business planning;

14.2.6 complying with applicable laws, regulations and statutory instruments; or

14.2.7 complying with any request for information or disclosure from a Court or other appropriately authorised body.

14.3 Neither party shall disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Contract except that the Hosting Service Provider may disclose Confidential Information to its employees, to the Hosting Service Provider and to HBT's other suppliers and sub-contractors and employees of its Affiliates who will comply with the obligations of confidentiality on HBT set out in this clause 14. Each party agrees that any Confidential Information received by it from the other party shall only be used for the purposes of the performance of its obligations and/or the exercise of its rights.

14.4 These restrictions shall not apply to any information which is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 14, is acquired from a third party who owes no obligation of confidence in respect of the information, has been independently developed by the recipient, or is required by any Court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information.

## **15. Data Protection**

15.1 HBT and the Customer each agree to comply with their respective obligations under the Applicable Data Protection Laws and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable HBT and/or the Hosting Service Provider to process personal data in connection with the performance by HBT of its obligations under this Contract.

15.2 Except in respect of Customer Details, the use of which is governed by clause 15.3, if and to the extent that HBT Processes Personal Data in the capacity of the Data Processor of the Customer in the course of performing its obligations under this Contract, HBT shall act in accordance with the Customer's instructions in respect of the Processing of such Personal Data from time to time, and use appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction or damage.

- 15.3 Any and all Customer Details supplied by the Customer is held and may be used and disclosed in accordance with HBT's current privacy policy available on the HBT Website.
- 15.4 Notwithstanding anything to the contrary, HBT and/or the Hosting Service Provider shall be entitled to put any data obtained under or in connection with this Contract into a computerized directory in anonymised form and may use and disclose such data in order to enable HBT and/or the Hosting Service Provider to provide the Services and market other products and services to the Customer.
- 15.5 The Customer acknowledges and agrees that in submitting data (including Customer Details) to HBT under or in connection with this Contract, it gives its consent (and it shall procure that each of the other End Users shall give its consent, as required) for such data to be shared with the Hosting Service Provider and the Licensors for use by the Hosting Service Provider and the Licensors for purposes in connection with the provision of the Services. The Customer hereby consents (and it shall procure that each of the other End Users shall give its consent) to HBT and/or the Hosting Service Provider transferring Personal Data outside of the European Economic Area to the extent necessary in connection with this clause 15.5.
- 15.6 Notwithstanding anything to the contrary, the Customer agrees that HBT and/or the Hosting Service Provider shall be entitled, when required by law, to disclose to government agencies passwords, decryption codes, and details of the Customer's information processed using the Services, upon written notice to the Customer.
- 15.7 The Customer agrees that HBT may monitor and record calls made to or by HBT or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by HBT under this condition.
- 15.8 The provisions of this clause 15 shall survive the termination of this Contract.

## **16. Limitation of Liability**

- 16.1 HBT shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect), loss of, corruption of, or damage to data or software (whether direct or indirect), any special indirect or consequential loss or damage or any loss suffered by any third party or any liability to any third party.
- 16.2 The total liability of HBT (other than liability governed by clause 16.3) arising out of or in connection with this Contract (whether arising in contract, in tort, including negligence, as a result of breach of statutory duty or otherwise howsoever) is limited to a sum equivalent to the total of Charges paid to HBT in the previous twelve (12) months, for any one cause of action or series of causes of action arising out of the same event, act or omission (the "**Per Claim Cap**") and, in the aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any twelve (12) month period.
- 16.3 HBT's liability (whether arising in contract, in tort (including negligence), or as a result of breach of statutory duty or otherwise howsoever) for damage to tangible property shall be limited to £5000.00 in respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitutes "tangible property".
- 16.4 Nothing in this Contract shall exclude or restrict the liability of either party for death or personal injury arising as a result of its negligence, for its fraud; or for any other liability which cannot be excluded or limited by law.
- 16.5 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent

permitted by law.

- 16.6 HBT are not liable to the Customer for the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.
- 16.7 No delay in enforcing any of the provisions of this Contract shall affect or restrict the rights of HBT arising under this Contract.
- 16.8 HBT shall not be in breach of this Contract or under any liability for any failure to perform or for delay in performing any obligation under this Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Contract by the Customer or any voluntary act or omission of the Customer.

## **17. Force Majeure**

- 17.1 Neither party shall be obliged to carry out any obligation under this Contract (other than the Customer's obligation to pay the Charges and to indemnify HBT and/or the Hosting Service Provider) where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.
- 17.2 If any event described in clause 17.1 lasts more than fourteen (14) days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Contract by giving thirty (30) days written notice to the other party.
- 17.3 A party relying on this clause 17 shall use reasonable endeavours to mitigate the effects of a force majeure event.

## **18. Audit**

- 18.1 During the term of this Contract and for a period of two (2) years after the termination of this Contract the Customer shall keep separate accounts and records giving correct and adequate details of all payments made in respect of this Contract and the Customer's use of the Services and Software (including Third Party Software) and shall upon request report to HBT in respect of the above and/or permit HBT, the Hosting Service Provider, the Licensors and its and their duly appointed representatives at all reasonable times to inspect all such accounts and records and to take copies thereof.
- 18.2 In the event that an audit conducted in accordance with clause 18.1 uncovers a payment shortage in respect of the Charges, the Customer shall pay HBT:
  - 18.2.1 in respect of Microsoft Third Party Software, 15% per unit price for each Microsoft Third Party Software product which was not paid for. In such circumstances HBT shall presume that such unreported use of the relevant Third Party Software began upon commencement of this Contract unless the Customer can reasonably demonstrate a different scope and duration of usage; or
  - 18.2.2 in respect of any other Software or other element of the Charges, any unpaid amount which is due and payable in accordance with the terms of this Contract.

- 18.3 In the event that an audit conducted in accordance with clause 18.1 uncovers a payment shortage of Charges of 5% or more, the Customer shall reimburse HBT, the Hosting Service Provider and/or its Licensors for the expenses incurred in conducting such audit.

## **19. General**

- 19.1 The Contract shall not create or constitute a partnership, joint venture or agency relationship between the Parties.
- 19.2 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.3 No failure to exercise, or delay in exercising a right, power or remedy provided by the Contract or by law shall constitute a waiver of that right, power or remedy, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.
- 19.4 This Contract does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.5 Customer shall not assign, charge or otherwise deal with all or any of its rights and obligations in the Contract in whole or in part without the prior written consent of HBT.
- 19.6 All notices, requests and other communications called for by this Contract will be deemed to have been given immediately if made by electronic mail (confirmed by concurrent written notice sent first class post, postage prepaid) to the addresses set out herein.
- 19.7 The Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods shall not apply and both Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.
- 19.8 Notwithstanding any other provision of this Contract, HBT may vary this Contract at any time by notice in writing to the Customer if it needs to do so to comply with terms contained in HBT' contracts with any Third Party Supplier and/or any contracts between the Hosting Service Provider and any Licensor or any law or statutory obligation.
- 19.9 In the event of the termination (but not expiry) of the Head Agreement, the Customer and HBT hereby agree that upon the date (Novation Date) specified in a notice received by the Customer from the Hosting Service Provider (Novation Notice), the rights and obligations under this Contract (on its then current terms) shall be automatically novated from HBT to the Hosting Service Provider upon the following terms:
- 19.9.1 the Hosting Service Provider shall assume all the obligations of HBT to the Customer under or arising from this Contract on or following the Novation Date. Such assumption by the Hosting Service Provider of the obligations of HBT shall be confirmed in the Novation Notice;
- 19.9.2 the Customer hereby agrees to be bound by its obligations under this Contract (to the extent arising on or following the Novation Date) in every way as if the Hosting Service Provider had been a party to the Contract in place of HBT; and
- 19.9.3 the Customer and HBT hereby agree that all rights and liabilities in respect of the obligations of HBT and/or the Customer under this Contract that accrued prior to the Novation Date shall

remain rights and liabilities as between the Customer and HBT. The Customer hereby agrees that the Hosting Service Provider shall have no liability to the Customer (whether in contract or in tort or otherwise) arising from any act or omission of HBT in the performance or purported performance of all or any of [Reseller's] obligations to the Customer under the Contract prior to the Novation Date.



## SCHEDULE 1: Definitions

In these terms and conditions (unless the context otherwise requires):

**Acceptable Use Policy** means HBT's policy for the Customer's use of the Services, as set out on HBT's Website or as otherwise provided to the Customer by HBT, and as may be revised by HBT from time to time;

**Act** means the Communications Act 2003, as amended, and the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419;

**Activation Date** means with respect to an Order, the date on which the Services or any part thereof first become active and available for use by the Customer under that Order;

**Affiliate** means in respect of any party hereto any firm or body corporate in which such party directly or indirectly, owns more than half the capital or business assets, has the power to exercise more than half the voting rights, has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing such firm or body corporate, or has the right to manage the business of such firm or body corporate;

**Charges** mean the charges payable by the Customer to HBT for and/or in connection with the provision, implementation, maintenance and support and/or administration of the Services as set out in HBT Price List and any other charges payable pursuant to this Contract (including the Professional Services Charges) or otherwise agreed in writing between HBT and the Customer;

**Commencement Date** means the date upon which this Contract is executed by both parties;

**Confidential Information** means all information whether verbal, written, stored or otherwise obtained including, but not limited to, data, facts and statistics about the business affairs, products, product development, trade secrets, know-how, personnel, customers or suppliers of the disclosing party whether or not they are or were designated or marked as confidential together with all information derived by the receiving party from the foregoing which is by its nature confidential or proprietary;

**Contract** means the contract between HBT and the Customer comprising these Terms and Conditions, together with the Order Form, any Statement of Work and/or any other documents specifically incorporated into such contract, and/or any Schedules hereto;

**Control** shall have the meaning set out in section 840 of the Income and Corporation Taxes Act 1988;

**Customer** means the person (not being an individual consumer), proprietorship, partnership, corporation, government or other subscription or publicly funded enterprise, company or other body corporate named in the Order Form;

**Customer Details** means the data which identifies the Customer or any employee, director, officer, partner, shareholder, or other relevant individual of the Customer;

**Customer Materials** any materials supplied to HBT by the Customer in connection with the implementation and/or performance of the Services;

**Customer Services** means the helpdesk support and any other support and maintenance services to be provided by HBT and/or any Third Party Service Provider as set out on the Order Form or as may otherwise be

notified to the Customer from time to time;

**Data Protection Laws** means to the extent applicable: (i) the General Data Protection Regulation, Regulation 2016/679 of the European Parliament (“GDPR”) and any applicable national associated laws or implementations thereof; (ii) GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (“UK GDPR”), together with the Data Protection Act 2018 (“UK Data Protection Law”); in each case, as may be amended, supplemented or replaced from time to time;

**Deliverables** the deliverables to be provided to the Customer under a Statement of Work;

**Ensim** means Ensim Corporation, 3945 Freedom Circle Suite 1100, Santa Clara, CA, USA, 95054;

**Ensim Software** means Third Party Software the Intellectual Property Rights in which are owned by Ensim;

**Equipment** means any hardware and/or peripherals owned, controlled, licensed or provided by the Customer or otherwise made available for the purposes of receiving the Service but excluding any Reseller Equipment;

**HBT Equipment** means any hardware, peripherals and/or other equipment supplied to the Customer by HBT for use in respect of the Services;

**Head Agreement** means the agreement for the time being between HBT and the Hosting Service Provider appointing HBT to resell the Services;

**Hosting Service Provider** means the third party for the time being that is hosting the Services;

**Initial Contract Period** means the period commencing on the Commencement Date and running for thirty-six (36) months or as otherwise specified in the Order Form;

**Intellectual Property Rights** means any intellectual property rights of whatever nature subsisting at any time in any part of the world including, without limitation, copyrights, design rights, patents, registered designs, trademarks, service marks, rights in trade secrets, know-how and other confidential information, rights in respect of databases, the rights to apply for any of the foregoing and applications for any of the foregoing;

**HBT Price List** means the list of charges [set out in the Order Form] OR [in force from time to time and available on the HBT Website, together with the method of calculation of the charges];

**HBT Website** means the website located at [www.hbtcommunications.com](http://www.hbtcommunications.com) or such other website as may be notified by HBT from time to time;

**Licence Terms** means licensing conditions and restrictions of the Software manufacturer, supplier or Licensor, including:

- (a) in respect of Microsoft Software and Ensim Software those licensing conditions and restrictions set out in Schedule 2, as such terms may be amended from time to time, and communicated to the Customer by HBT posting the same on HBT Website; and

(b) in respect of any other Software the licensing conditions and restrictions the details of which shall be made available on request;

**Licensor** means the licensors of Software (including Third Party Software) to the Hosting Service Provider and/or HBT for the provision of the Services under this Contract including Microsoft and Ensim;

**Microsoft** means Microsoft Ireland Operations Limited of 70 Sir John Rogerson's Quay, Dublin 2, Ireland;

**Microsoft Software** means Third Party Software the Intellectual Property Rights in which are owned by Microsoft;

**Order** means an order placed by the Customer with HBT for the provision of Services;

**Order Form** means the application form containing the details of an order for Services placed by the Customer;

**Personal Data** shall have the meaning given to that term in the UK GDPR;

**Processing** shall have the meaning given to that term in the UK GDPR and the term "**Process**" shall be construed accordingly;

**Professional Services** means any services to be provided to the Customer by HBT and/or its sub-contractor in connection with the implementation of the Services and as set out in a Statement of Work;

**Professional Services Charges** means the charges in respect of the Professional Services as set out in the Statement of Work together with all reasonable related expenses;

**Service Failures** means any failure, error or defect in the provision of the Services arising from, caused by or contributed to by the acts or omissions of the Customer or third parties including other providers of telecommunications, computers or other equipment or services including internet services; or any failure, error or defect arising as a result of causes beyond the reasonable control of HBT;

**Service Level** in relation to the Services means the performance standard, if any, set out in this Contract;

**Services** means any Hosted Business Email, Hosted Email Archival, Hosted SharePoint, Hosted CRM services, offerings and any other hosting and/or associated services including any Professional Services to be provided by HBT and/or any of its contractor(s) (including the Hosting Service Provider) to the Customer pursuant to this Contract as described in the Order Form as such services may be amended from time to time in accordance with this Contract (and "**Service**" shall mean any one of the Services);

**Software** means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures used or required to be used in the provision of or for the Customer to access the Services;

**Start Date** means the target date for the commencement of the provision of the Services to the Customer as specified or agreed to by HBT;

**Statement of Work** means a statement of work in substantially the form set out in Schedule 3 (or in such other

form as may from time to time be agreed in writing) setting out the Professional Services and signed by HBT and the Customer;

**Subsequent Renewal Period(s)** means a period of twelve (12) months, commencing immediately upon expiry of the previous Initial Contract Period;

**Term** means the Initial Contract Period and any Subsequent Renewal Period(s), as applicable;

**Third Party Service Provider** means any provider of any Third Party Services, including the Licensors and the Hosting Service Provider;

**Third Party Services** means any part of the Services which HBT procures from a third party, including any third party services, equipment and/or Third Party Software which HBT uses in order to provide the Services.

**Third Party Software** means any Software the Intellectual Property Rights in which are owned by a party other than HBT or its Affiliates.

## Schedule 2 – Licence Terms

### Schedule 2A - TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by Genesis Communications Limited (hereinafter referred to as "**Company**"). Company does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Company must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Company, and to your understanding of, compliance with, and consent to the following terms and conditions, which Company does not have authority to vary, alter, or amend.

#### 1 DEFINITIONS

"**Client Software**" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"**Device**" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device.

"**Server Software**" means software that provides services or functionality on a computer acting as a server.

"**Software Documentation**" means any end user document included with server software.

"**Redistribution Software**" means the software described in Paragraph 4("Use of Redistribution Software") below.

#### 2 OWNERSHIP OF LICENSED PRODUCTS.

The Licensed Products are licensed to Company from an affiliate of the Microsoft Corporation (collectively "Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other

intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.

**3 USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by Company only in accordance with the instructions, and only in connection with the services, provided to you by Company. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

**4 USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by Company, you may have access to certain "sample", "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO COMPANY, WHICH TERMS MUST BE PROVIDED TO YOU BY COMPANY.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Company.

**5 COPIES.** You may not make any copies of the Licensed Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Company; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of

Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Company.

- 6 LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.
- 7 NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Company.
- 8 TERMINATION.** Without prejudice to any other rights, Company may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Company or Company's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.
- 9 NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY COMPANY AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.**
- 10 PRODUCT SUPPORT.** Any support for the Licensed Products is provided to you by Company and is not provided by Microsoft, its affiliates or subsidiaries.

upon notice from Company or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.

- 11 NOT FAULT TOLERANT.** THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
- 12 EXPORT RESTRICTIONS.** The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- 13 LIABILITY FOR BREACH.** In addition to any liability you may have to Company, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

**Schedule 2B**

**ENSIM UNIFY ELECTRONIC AGREEMENT**

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**TERMS OF USE**

IMPORTANT: Please Read Carefully  
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You are granted a personal, non-transferable, nonexclusive license to use the software solely for your internal business purposes. You may not (a) modify, translate, decompile, disassemble, reverse engineer or otherwise attempt to derive source code or create derivative works based upon the software, (b) sell, lease, rent, license, sublicense or otherwise distribute the software or (c) remove, alter or destroy any proprietary, trademark or copyright markings or notices used in conjunction with, placed upon or contained within the software or any related documentation. You will comply with the terms and conditions of all Ensim and third-party software supplier license agreements provided with or embedded in any software.

You do not acquire any rights of any kind in and to any Ensim or third-party software supplier trademark, trade name, logo or product designation. IN NO EVENT WILL ENSIM OR ANY THIRD-PARTY SOFTWARE SUPPLIER BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO YOUR USE OF THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA OR BUSINESS INFORMATION, EVEN IF ENSIM OR SUCH SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGARDLESS OF THE CAUSE OR FORM OF ACTION, NEITHER ENSIM'S NOR ITS SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO YOUR USE OF THE SOFTWARE SHALL EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE SOFTWARE.

You acknowledge that the software is subject to United States export control laws and regulations which restrict exports, reexports and disclosures to foreign persons of cryptographic items and are also subject to certain foreign laws which may restrict the export, reexport, import and/or use of such items. Your right to use the software hereunder is expressly made subject to any export laws, regulations, orders or other restrictions imposed by the United States or by any other country or governmental entity on the software. You will not import, export or reexport, directly or indirectly, any software or related information to any country or foreign person to which such import, export or reexport is restricted or prohibited, or as to which such country, government or any agency thereof requires an export license or other governmental approval at the time of import, export or reexport without first obtaining such license or approval. You unconditionally accept full responsibility for your compliance with these requirements. The foregoing contains the complete agreement between you and Ensim with respect to the licensing of the software; it is to be interpreted and governed in accordance with the laws of the State of California and can be amended or modified only in a writing signed on behalf of you and Ensim. US Government Restricted Rights. Notice - Distribution and use of

products including computer programs and any related documentation and derivative works thereof, to and by the United States Government, are subject to the Restricted Rights provisions of FAR 52.227-19, paragraph (c)(2) as applicable, except for purchases by agencies of the Department of Defense (DOD). If the software is acquired under the terms of a Department of Defense or civilian agency contract, the software is "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) of the DOD FAR Supplement and its successors. All U.S. Government end users acquire the software with only those rights set forth in this Agreement. Unpublished - rights reserved under the copyright laws of the United States.



**Schedule 3**

**Form of Statement of Work**

Reference Number: [?]

This **Statement of Work** is made pursuant to the Contract dated [ ] and made between HBT and [?] ("Customer")

Part 1

**The Services**

1.1 Scope of the Services

1.2 Individuals

Part 2

**Customer**

Part 3

**Charges (Fees and Expenses)**

3.1 The Charges

3.2 Payment Profile

Customer shall pay the Professional Service Charges to HBT in accordance with the following milestones:

<b>Milestone</b>	<b>% of Charges payable upon achieving Milestone</b>
[?]	[?]
[?]	[?]
[?]	[?]

Part 4

**Period of engagement**

Part 5

**Specification**

Part 6

**The Acceptance Tests**

6.1 In the absence of any express acceptance tests in respect of a Deliverable, the relevant Deliverable shall be deemed to be accepted either:

- (a) when the Customer's nominated representative provides HBT and/or the Hosting Service Provider with a written notification of acceptance, having conducted reasonable examination and for testing of the Deliverable against the relevant specification; or
- (b) in absence of such written acceptance, 21 days after the delivery of the relevant Deliverable (or such other period as agreed between the Customer and HBT).

Signed .....

Signed.....

Duly authorised for and on behalf of

Duly authorised for and on

behalf of

◆ *[Customer Name]*

HBT

Dated.....

Dated.....