



## General Terms and Conditions

### 1. GENERAL

This Agreement (the "Agreement") details all the terms and conditions upon which the Services are supplied or the Equipment hired by OrbitalNet Limited to the Customer unless expressly varied in writing and signed by a representative of OrbitalNet Limited.

### 2. DEFINITIONS

Unless the context otherwise requires, the terms and expressions below shall have the meaning which is ascribed to them as follows:

**Circuit:** means the link (which serves) for the transmission of signals; it also includes a virtual circuit

**Date of availability of a Service:** means the date at which a Service of OrbitalNet Limited is made available to a Customer, as evidenced by the installation completion form, whether or not it is actually used by such Customer.

**Duration of Interruption:** means the time in minutes of any interruption of Service commencing at the time when OrbitalNet Limited is advised by the Customer of the interruption.

**Interruption of Service:** means as it relates to a Circuit or Service, the total technical inability to transmit signals.

**Service(s):** means telecommunications Service(s) as well as any other Service supplied by OrbitalNet Limited.

**Customer:** shall mean the person specified overleaf including any receiver, administrator or other person appointed to manage the affairs of the Customer.

**Equipment:** shall mean the Equipment rented to the Customer by OrbitalNet Limited including all replacements and renewals of such Equipment and the component parts thereof and all accessories and additions thereto.

**OrbitalNet:** shall mean OrbitalNet Limited.

### 3. DURATION OF THE AGREEMENT

This Agreement shall be effective from the date hereof and shall be effective for the Minimum Period stated overleaf which shall commence on the Date of availability of service. After the end of the Minimum Period the Agreement will continue for a further period until either party shall give forty five (45) days written notice to the other to expire at the end of the Minimum Period or any time thereafter provided always that nothing in this clause shall prevent OrbitalNet terminating the Agreement under clause 9 hereof.

### 4. TERMS OF SERVICE

4.1 In consideration of the monthly rental fees and installation fees stipulated in any schedules of this Agreement, OrbitalNet undertakes to rent the Equipment to the Customer and to supply to the Customer the Services described in the Schedule of Services to be provided.

4.2 OrbitalNet will indicate the proposed date the Service will become available. The Customer is deemed to have accepted the delivery of the Service on the date it becomes available for use by the Customer, whether or not the Customer makes use of the Service.

4.3 The Customer shall make available to OrbitalNet, free of charge, adequate space, the required electrical facilities and appropriate access

to its premises for the purposes of installation, inspection, repair or maintenance of any Equipment required for performance of this Agreement. The Customer will afford OrbitalNet or its representatives all facilities reasonably required to enable delivery and installation of the Equipment to take place

- 4.4 OrbitalNet reserves a fixed period from 00.01 a.m. to 03.00 a.m. every Sunday to undertake maintenance and changes relating to the Services in order to ensure their continuous operation. In addition, OrbitalNet may from time to time proceed with such trials, verifications, adjustments and maintenance relating to the Services as may be necessary. Every attempt will be made to schedule such work in advance at a time convenient to the Customer, and credit shall be granted to the Customer for any interruption resulting from such loss of Service; however no credit shall be granted for interruption to or loss of Service where maintenance, repair or replacement occurs as a result of damage caused to the Equipment by the customer, its agents or representatives, whether by negligence or otherwise.
- 4.5 The Equipment shall at all times remain in the ownership of OrbitalNet and the customer will have no rights in the Equipment other than as mere bailee (notwithstanding that it may have become affixed or attached to any land or building). OrbitalNet may however assign and sell its rights under this Agreement and its rights in and to the Equipment. The Equipment must only be used by the customer and (unless OrbitalNet otherwise agrees in writing) must be kept at the address of the Customer set out in this Agreement. The Customer shall not sell, assign, charge or create any sub-lease over or otherwise dispose of or abandon the Equipment.
- 4.6 The Customer shall at all times insure the Equipment covering the full replacement value of the Equipment against all risks. The interest of OrbitalNet in the Equipment shall be noted on the policy and, in the event of loss or damage to the Equipment shall be payable direct to OrbitalNet; the customer authorises OrbitalNet to give a good and valid receipt in respect of such policy monies.
- 4.7 Upon the discontinuation, whether under clause 3, clause 9 or otherwise, of any Service provided under this Agreement the Customer shall allow OrbitalNet to take possession of the Equipment installed in the premises occupied by the Customer and for this purpose OrbitalNet shall be entitled freely to enter upon any premises occupied by or under the control of the Customer. The Customer shall indemnify OrbitalNet for the full cost of the Equipment in the event that repossession of the Equipment is rendered impossible by reason of total loss, unauthorised removal, refusal of access or for any other reason whatsoever.
- 4.8 The Customer shall be responsible for any costs and expenses incurred by OrbitalNet and for its failure to allow OrbitalNet to take possession of the Equipment when requested by OrbitalNet including but not limited to any costs and expenses incurred in locating, repossessing or recovering the Equipment.

## **5. CUSTOMER COVENANTS**

The Customer undertakes and agrees:

- 5.1 To take all reasonable and proper care of the Equipment and to keep the same in good and serviceable condition (reasonable fair wear and tear excepted) and to indemnify OrbitalNet against loss or damage to the Equipment howsoever caused.
- 5.2 To ensure that any instructions or manuals supplied by OrbitalNet or the manufacturer of the Equipment are or will prior to the Equipment being brought into use be fully understood and well observed by the Customer and any person who will be responsible for use of the same.
- 5.3 To take such further steps as may be properly recommended by OrbitalNet or the manufacturer of the Equipment or may otherwise be necessary to ensure that the Equipment will be safe and without risk to

Health and Safety when properly used by the Customer or authorised users.

- 5.4 Only to operate the Equipment and permit the Equipment to be operated in a proper manner and by persons who are competent to operate such Equipment.
- 5.5 Not to make or cause or permit to be made any alteration, amendment, modification or addition to the Equipment without OrbitalNet's prior consent in writing.
- 5.6 To keep the Equipment suitably housed.
- 5.7 To permit OrbitalNet and any person duly authorised by OrbitalNet to enter on any land or premises in which the Equipment is for the time being sited so as to inspect and/or repair the Equipment.

## **6. BILLING**

- 6.1 Invoices and Statements of Account will be transmitted electronically via OrbitalNet's network to the Customer's network or computer processor unless requested otherwise in writing.
- 6.2 OrbitalNet shall bill the Customer a calendar monthly rental fee in advance for the Services and Equipment which OrbitalNet supplies. Rental for Service and Equipment will be counted from the date the Service becomes available to the Customer whether or not use is made of the Service and Equipment. Part months chargeable for the initial rental period shall be charged on a pro-rata basis.
- 6.3 The rental fee shall be paid by Banker's Standing Order on the fifteenth (15<sup>th</sup>) day of each month of Service.
- 6.4 Installation fees and pro-rata initial rental period fees shall be included with the first instalment under the Banker's Standing Order.
- 6.5 Any billing discrepancies shall be presented to OrbitalNet in detail and in writing within ten (10) days following the date of an invoice or Statement of Account. Any adjustment to the Statement of Account agreed to between OrbitalNet and the Customer shall be included on the following Statement of Account.
- 6.6 At the discretion of OrbitalNet interest compounded at the rate of two percent (2%) per calendar month or such sum as specified under the Late Payment of Commercial Debts (interest) Act 1998 or similar, whichever shall be the higher, may be charged on any account in arrears. Furthermore OrbitalNet shall have the right to suspend any Service in the event that the Customer fails to pay within fourteen (14) days any account notified to the Customer as being in arrears. During any such period of suspension by OrbitalNet the rental fee remains payable in full.
- 6.7 The customer shall be liable for any costs and expenses incurred in enforcing any clause in this Agreement.

## **7. LIABILITY**

- 7.1 In providing the Services described in the Schedule of Services to be provided, OrbitalNet its directors, officers, employees or agents shall have no liability whatsoever with respect to the data which OrbitalNet transports. Except as otherwise provided herein, OrbitalNet makes no representations or warranties of any nature whatsoever with respect to the Services. OrbitalNet does not guarantee the continuous operation of the Services or Equipment. Nor can it be held liable toward the customer or any other person for any damage whatsoever due to interruption of any Service provided by OrbitalNet
- 7.2 The Customer shall indemnify OrbitalNet against all third party claims resulting from defacing of or damage caused to the premises occupied by the Customer by reason of necessary works carried out to effect the installation of the Equipment.
- 7.3 The Customer shall indemnify OrbitalNet against all claims resulting from the use or operation of any Circuit or any Equipment by the Customer in

a manner which is contrary to the applicable laws or regulations.

## **8. FORCE MAJEURE**

OrbitalNet shall not be held liable for any direct or indirect economic loss, including but not limited to damages resulting from loss of use, loss of profits, loss of business revenue or for third party losses arising from the interruption of Service of any nature or for any reason whatsoever, including for any circumstance arising from force majeure or for any circumstance or event that is beyond the control of OrbitalNet, including without limitation, accidents, labour difficulties or the inability to obtain materials or labour necessary for the performance of the obligations of OrbitalNet from its customary suppliers.

## **9. TERMINATION OF THE AGREEMENT**

9.1 OrbitalNet shall have the right to terminate the Services and the Agreement forthwith in the following events:

9.1.1 If the Customer fails to pay within twenty one (21) days any account notified to the Customer as being in arrears.

9.1.2 If the Customer uses or allows the use of the Services of OrbitalNet for a purpose or in a manner which is contrary to the applicable laws or regulations.

9.1.3 If the Customer deliberately, negligently, or in carrying out its own installation, causes the loss of or damages to the Equipment of OrbitalNet.

9.1.4 If the Customer fails to comply with or commits any breach of this Agreement.

9.2 OrbitalNet shall have the right to terminate the Services and the Agreement without prior notice and remove its Equipment in the event of bankruptcy, voluntary assignment of assets, receivership, liquidation or other events of cessation of activities of the Customer for any reason whatsoever.

9.3 The termination of the Services and the Agreement by OrbitalNet does not discharge the Customer from its obligation to pay any amount which is owing pursuant to this Agreement at the time of such termination of service, including all installation fees. Furthermore, early termination penalty equal to one half of the total value, as at the date of termination, of the amounts payable during the remainder of the agreed Minimum Period of Service relating to all Services shall also be payable immediately upon such termination.

## **10. CANCELLATION**

If the Customer cancels or delays a request for Service after signing this Agreement, but prior to the date of delivery of the Service, the Customer shall pay all of the costs incurred for the purposes of the implementation of this Agreement. Implementation activities are considered to have begun once the Customer signs this Agreement.

## **11. SEVERABILITY**

If any provision of the Agreement is declared to be invalid or unenforceable by any competent authority, such finding shall not affect the validity of the remaining provisions of the Agreement unless deletion of the provision declared to be invalid or unenforceable renders the providing of the Services hereunder impossible.

## **12. CONFIDENTIALITY**

Each of the parties hereto will take reasonable steps to hold the terms and conditions of this Agreement on a confidential basis and all acts of the parties taken in pursuance thereof, except for information which becomes part of the public domain through no fault or action of such party.

**13. GOVERNING LAW**

This agreement shall be deemed to be made in the country of the supplier and shall be governed and interpreted according to the laws of England and Wales.

**14. NOTICE**

All notices required or permitted to be given under the terms of this Agreement shall be in writing and sent to the Customer at its address specified in the Agreement, and in the case of notices sent to OrbitalNet at its address specified in the Agreement. Notices may be given by certified or registered mail, by private courier, by tele-facsimile, or by OrbitalNet's E-Mail service. Any notice so given shall be deemed to have been given and received on the fifth day of postal service following mailing given by certified or registered mail or when so personally delivered or sent by private courier, by tele-facsimile, or by OrbitalNet's E-Mail service. Either party may change its address for notice by giving notice in the appropriate manner.