

1. Background:

- a. The Supplier is the legal and beneficial owner of the Monitoring Equipment, Software, Clarity Site and Monitoring Services.
- b. The Monitoring Equipment is supplied by the Supplier to the Customer subject to the CPA Model Conditions for the Hiring of Plant (2011) and Supplementary Conditions Applicable to Tool and Equipment Hire ("**CPA Conditions**").
- c. The Customer has subscribed to the Clarity Site and Monitoring Services in accordance with these terms.

2. Definitions

- a. **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business
- b. **Clarity Account:** the Customer's personal account on the Clarity Site
- c. **Clarity User:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services
- d. **Clarity Site:** the Supplier's data monitoring platform which is linked to the Software and accessed at <https://monitoring.siltbuster.com/login.php> or any other website as notified by the Supplier to the Customer from time to time
- e. **Data:** all text, information, data or code, in whatever medium or form, collected by or obtained from the Software and transmitted to and stored on the Clarity Site
- f. **Data Parameters:** the criteria set out in the Order against which the Monitoring Service will be activated for Data results achieved outside of the criteria
- g. **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, and Intellectual Property Rights include, without limitation, any Marks.
- h. **Marks:** any trade marks, trade names, service marks, trade dress, logos, URLs and domain names or any identifying slogans and symbols of the Supplier, whether or not registered
- i. **Monitoring Equipment:** the plant monitoring and alarm equipment
- j. **Monitoring Service:** the automated alert notifications sent to the Customer's designated Clarity User, using the contact details set out in the Order, which is activated upon breach of the Data Parameters
- k. **Normal Business Hours:** 8.00 am to 6.00 pm local UK time, each Business Day
- l. **Order:** the Customer's order for the Services as set out in the Supplier's order form
- m. **Services:** the services made available to the Customer, being the Clarity Site and the Monitoring Service as set out in the Order
- n. **Software:** the software installed on the Monitoring Equipment and which transfers Data collected from the Monitoring Equipment to the Clarity Site
- o. **Subscription Term:** the term over which the Monitoring Equipment is hired by the Customer in accordance with the CPA Conditions.

- p. **Supplier:** Siltbuster Limited, registered in England and Wales under company number **04737424**, registered office at 32-36 Bournemouth Road, Chandler's Ford, Eastleigh, SO53 3ZL

3. Services

- a. The Order constitutes an offer by the Supplier to provide the Services in accordance with these terms. The Order is deemed accepted upon written communication from the Customer at which point and on which date a contract comes into existence, subject to these terms.
- b. The Supplier hereby grants the Customer and its authorised Clarity Users a non-exclusive, non-transferable right during the Subscription Term to access the Clarity Site, view and download the Data and use the Monitoring Services.
- c. Each Customer will be allocated a personal Clarity Account and each Clarity User will be able to obtain access to the Customer's Clarity Account on creation of their own login. Each Clarity User shall keep a secure password for its access to the Clarity Site, which password it shall keep confidential.
- d. The Clarity Site is a web-based platform that enables Clarity Users to view and download the Data received from the Monitoring Equipment.
- e. The Supplier reserves the right to terminate any Clarity Account and/or password at any time and disable the Customer's use of the Services, if, in the Supplier's opinion, the Customer has failed to comply with any of the provisions of these terms.
- f. From time to time the Supplier may: (i) modify the Services by issuing updates; (ii) make new features, functionality, applications or tools available in respect of the Services, whose use may be subject to the Customer's acceptance of further terms and conditions; and (iii) give the Customer reasonable written notice of material modifications to the Services and any such new features, functionality, applications or tools.

4. Customer's obligations:

The Customer shall:

- a. Co-operate with the Supplier, including the prompt provision of necessary access to such information as may be required by the Supplier to enable it to provide the Services;
- b. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these terms, not:
 - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Data (as applicable) in any form or media or by any means; or
 - ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- c. without affecting its other obligations under these terms, comply with all applicable laws and regulations, with respect to its activities under these terms;
- d. not access all or any part of the Services and Data in order to build a product or service which competes with the Services;
- e. not attempt to obtain, or assist third parties in obtaining, access to the Services and/or Data, other than as provided under these terms;
- f. use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Data and, in the event of any such unauthorised access or use, promptly notify the Supplier;

- g. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- h. be solely responsible for procuring, maintaining and securing its network connections and telecommunications links and internet connectivity;
- i. be solely responsible for configuring its information technology, computer programmes and platform to access the Clarity Site and make use of the Services, including use of its own virus protection software;
- j. must not misuse the Services by knowingly introducing viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful;
- k. must not attempt to gain unauthorised access to the Clarity Site, the server on which the Clarity Site is stored or any server, computer or database connected to the Clarity Site;
- l. ensure that all Clarity Users are aware of these terms and other applicable terms and conditions, and that they comply with them;
- m. is solely responsible for securing and backing up all Data which it downloads from the Clarity Site;
- n. notify the Supplier immediately of any fault, delay or other error in the Services.

5. Supplier's obligations:

- a. The Supplier undertakes that the Services will be performed substantially in accordance with these terms and as described in any marketing material and with reasonable skill and care.
- b. The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least five Normal Business Hours' notice in advance.
- c. The undertaking in this clause shall not apply to the extent of any non-conformance which is caused by use of the Services or Monitoring Equipment contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.
- d. The Supplier:
 - i. does not warrant that the Customer's use of the Services will be uninterrupted or error-free or that the Services or Data obtained by the Customer through the Services will meet the Customer's requirements;
 - ii. does not warrant that the Monitoring Services, the Clarity Site or access to the Data will always be available or be uninterrupted;
 - iii. makes no representations, warranties or guarantees, whether express or implied, that the Data is accurate, complete or up to date;
 - iv. does not guarantee that the Clarity Site will be secure or free from bugs or viruses;
 - v. may suspend or withdraw or restrict the availability of all or any part of or access to the Services for business and operational reasons;
 - vi. is not responsible for any delays, delivery failures, failure of the Monitoring Service, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Data may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- e. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms.

6. Use of the Clarity Site:

- a. By purchasing the Monitoring Equipment and the Services and registering as a Clarity User the Customer represents and warrant that: (i) all registration information that it and all Clarity Users submit is true and accurate in all respects.
- b. These terms are in addition to the Supplier's Privacy Policy and Terms of Use which are displayed on the Clarity Site.
- c. The Supplier may update and change the Clarity site from time to time to reflect changes to the Services, the Clarity Users' needs and the Supplier's business priorities.
- d. The Supplier has the right to disable any user identification code or password, if in the Supplier's reasonable opinion the Customer has failed to comply with any of the provisions of these terms.
- e. Where the Clarity Site contains links to other sites and resources provided by third parties, these links are provided for information only. Such links should not be interpreted as approval by the Supplier of those linked websites.

7. Payment:

- a. The price of the Services shall be the price set out in the Order and accompanying invoice and shall be the amount payable for the Services for the Subscription Term.
- b. The Customer shall pay the invoice in full and in cleared funds before access to the Clarity Site and use of the Monitoring Services will be activated by the Supplier.
- c. If the Subscription Term is renewed ("**Renewed Term**") then the price of the Services for the Renewed Term shall be invoiced to the Supplier and the Supplier shall pay such invoice within 7 days after the date of such invoice.
- d. Time is of the essence for payment of the invoices.
- e. If the Supplier has not received any payment within 7 days after the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may:
 - i. without liability to the Customer, disable the Clarity Account and the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - ii. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% above the Bank of England's base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- f. All amounts stated or referred to in these terms are non-cancellable and non-refundable.
- g. The supplier shall be entitled to increase the fees payable in respect of additional Clarity Users and at the start of each Renewed Term.

8. Limitation of liability:

- a. Except as expressly and specifically provided in these terms all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these terms;
- b. the Customer assumes sole responsibility for the Data obtained from the use of the Services and for conclusions drawn from such use;
- c. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these terms;

- d. the Supplier shall not be liable for any losses or damages which may be suffered by the Customer, whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which arise out of:
 - i. any failure in the Monitoring Service to send an alert and/or notification;
 - ii. wilful damage or misuse, operator error or other improper use of the Monitoring Equipment;
 - iii. alteration or repair to the Monitoring Equipment without the Customer's prior written approval;
 - iv. any errors or omissions in the Data;
 - v. any actions taken by the Supplier at the Customer's direction or from the Customer's fraud, negligence, failure to comply with or delay in compliance with its obligations under these terms;
 - vi. the Customer's use of, or inability to use, the Clarity Site;
 - vii. the deletion, corruption of or loss of the Data;
 - viii. any interruptions or breaks in the continuity of the electricity supply, the telecommunication network or internet connectivity;
- e. Nothing in these terms excludes the liability of the Supplier for: (i) death or personal injury caused by the Supplier's negligence; or (ii) fraud or fraudulent misrepresentation.
- f. the Supplier's total aggregate liability arising in connection with the performance of its obligations under these terms shall be limited to the total of the price paid for the Services during the 12 months immediately preceding the date on which the claim arose.

9. Intellectual Property Rights:

- a. The Supplier shall own all Intellectual Property Rights in and to the Software, and the Services including the Data;
- b. The Supplier shall indemnify and hold the Customer harmless against any loss or damage which the Customer may suffer or incur as a result of the Supplier's misuse of the Software or Intellectual Property Rights therein.
- c. This licence to use the Intellectual Property Rights shall automatically terminate in the following circumstances: (i) the Supplier disables, terminates or suspend the Customer's Clarity Account; (ii) the Supplier fails to make payments due to the Customer in accordance with clause 9; or (iii) the Customer commits a material breach of the terms of this licence.

10. Term and Termination:

- a. These terms shall, unless otherwise terminated as provided in this clause 10, commence on the date that the Order is accepted by the Customer and shall continue for the Subscription Term and, thereafter, shall be renewed subject to agreement between the parties and subject to the Supplier's payment of the invoice for the Renewed Term, unless either party notifies the other party of termination, in writing, on at least 30 days' notice.
- b. Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:
 - i. the Customer fails to pay any amount due under these terms on the due date for payment and remains in default not less than 5 days after being notified in writing to make such payment;
 - ii. the Customer commits a material breach of any other term which breach is irremediable or (if such breach is

remediable) fails to remedy that breach within a period of 5 days after being notified in writing to do so;

- iii. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up, having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - iv. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under this agreement has been placed in jeopardy.
- c. On termination of this agreement for any reason:
 - i. all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Data; ii. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these terms which existed at or before the date of termination shall not be affected or prejudiced;
 - iii. any provision of these terms that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. Waiver:

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12. Severance:

If any provision or part-provision of these terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this licence.

13. Entire agreement:

- a. These terms, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- b. The Customer acknowledges and agrees that in entering into these terms it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person relating to the subject matter of these terms, other than as expressly set out in these terms.
- c. Nothing in this clause shall limit or exclude any liability for fraud.

14. Variation:

No variation of these terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. Rights and remedies:

Except as expressly provided in these terms, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16. Third party rights:

These terms do not confer any rights on any person or party (other than the parties to these terms and, where applicable, their successors and



permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

17. Governing law:

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

18. Jurisdiction:

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