

Hire Terms and Conditions – Products and Services

1 DEFINITIONS

In this Agreement, the following definitions and rules of interpretation shall apply:

“**Agreement**” means these Terms, along with any related Sonardyne Quotation, corresponding Customer order and Confirmation;

“**Affiliate**” means any corporation, company, firm, partnership or other entity that, directly or indirectly, controls, is controlled by, or is under common control with the relevant party. For the purposes of this definition, “control” shall mean the ownership of at least 50 percent (50%) of the voting share capital of such entity or any comparable equity or ownership interest and /or the ability to appoint or replace the majority of the board of directors;

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in New York and London are open for business;

“**Charges**” means the amounts to be paid by the Customer to Sonardyne for hire of the Products and/or Services as specified in and all in accordance with the provisions of this Agreement;

“**Commencement Date**” means the date that the hire of Products and/or Services are to commence under the terms of the Agreement;

“**Confidential Information**” means any confidential information disclosed by one party concerning the business or affairs of that party or its Affiliates, including but not limited to information relating to that party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers but excludes confidential information that is already in the public domain other than by breach of a confidentiality agreement between the parties or is already known to the other party without restriction;

“**Confirmation**” means a written confirmation or acceptance of a Customer order, issued by Sonardyne to the Customer, which sets out details of the accepted order.

“**Customer**” means the customer to whom Sonardyne is hiring products and/or Services under this Agreement, as described on Sonardyne's Quotation, the corresponding Customer order and Confirmation;

“**Customer Materials**” means all and any information, specifications, plans, concepts, drawings, designs and other materials supplied by or on behalf of the Customer, in any format;

“**Date of Shipment**” means the date that the Products leave Sonardyne's location, as detailed in Sonardyne's Hire Quote;

“**Delivery**” means the making available of the Products to the Customer for hire which shall unless otherwise stated in this Agreement be at Sonardyne's or its stated third party's premises in accordance with clause 6.1;

“**Delivery Date**” means the date that Delivery is made as defined in clause 6.1;

“**Due Date**” shall have the meaning in clause 10.2;

“**Engineer**” means Sonardyne's personnel who is supplied by Sonardyne to provide engineering services to the Customer;

“**Equipment**” means tangible deliverables supplied for hire by Sonardyne under this Agreement as specified in Sonardyne's Quotation, excluding Software and documentation;

“**Force Majeure Event**” means an event beyond the reasonable control of a party (or any person acting on its behalf), and includes, without limitation, acts of God, storms, floods, fires, sabotage, strikes, lockouts, other industrial disputes, vandalism, riots, civil commotion or other civil unrest, the effects of legislation, regulation, refusal of export licence or any other government refusal, embargo or intervention, or other legal intervention, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources or severe transport disruption;

“**Hire Term**” means the period for which Sonardyne agrees to hire and the Customer agrees to take on hire the Products as described in Sonardyne's Quotation, subject to the provisions of this Agreement;

“**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or

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equivalent rights or forms of protection in any part of the world and "Intellectual Property Right" means any one of the Intellectual Property Rights;

"**Month**" means a calendar month;

"**Personnel**" means all officers, directors, employees and other persons hired as consultants, workers, agency personnel or in any other capacity or under any form of contract;

"**Products**" means the Equipment and/or Software and/or documentation to be supplied for hire by Sonardyne to the Customer under this Agreement as specified in Sonardyne's Quotation;

"**Quotation**" means the Hire Quote document issued by Sonardyne in response to a Customer's request to hire Sonardyne Products and/or Services;

"**Representatives**" means employees, officers, agents, consultants or sub-contractors of a party;

"**Services**" means the services listed in Sonardyne's Quotation or otherwise identified in this Agreement;

"**Shipment**" means as defined in clause 6.2;

"**Shipment Charges**" means the charges specified in clause 9.3;

"**Software**" means deliverables comprising computer code supplied as either Sonardyne Software, or Third Party Software in object code, whether embedded within Equipment, or supplied with Equipment, or supplied separately from Equipment, by Sonardyne under or in connection with this Agreement;

"**Sonardyne**" means Sonardyne, Inc. a company incorporated and registered in Texas with company registration number 76-0261169 whose registered office is at Suite 130, 8280 Willow Place Drive, Houston, Texas, 77070, USA;

"**Sonardyne Software**" means any Software, the Intellectual Property Rights to which are owned by Sonardyne or its Affiliates;

"**Specification/s**" means the Sonardyne agreed specification/s of the Products and/or Services;

"**Terms**" means the general terms and conditions set out in this document;

"**Third Party Software**" means any Software the Intellectual Property Rights to which are owned by a third party other than Sonardyne or its Affiliates;

"**UK**" means the United Kingdom;

"**US**" means the United States of America;

"**Warranties**" has the meanings stated in clause 4 and "**Warranty**" and "**Warrants**" shall be interpreted accordingly;

"**Warranty Period**" means the period stated as such in this Agreement, or if none is stated, then for the Hire Term, provided that for the Warranty Period, the Customer complies with the maintenance provisions of this Agreement or as stated in a separate maintenance agreement agreed between the parties;

"**Year**" means a calendar year.

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# SONARDYNE, INC.

## PART A – PRODUCTS & SERVICES

*(This Part A shall apply to all supply of Products and Services under the Agreement.)*

### 2 SUPPLY OF THE PRODUCTS AND SERVICES

- 2.1 Sonardyne and the Customer agree that the Products and/Services shall be supplied in accordance with this Agreement for the duration of the Hire Term.
- 2.2 Unless specifically stated herein, Sonardyne will not supply and is not responsible for any installation, commissioning, decommissioning or training services in relation to the Products supplied.
- 2.3 The different Parts of these Terms shall apply as described below:
  - 2.3.1 Part A shall apply to the supply of Products and Services under the Agreement;
  - 2.3.2 Part B shall only apply to the provision of Services, and shall be supplemental to the provisions of Part A.

### 3 ORDERS AND CONTRACTS

- 3.1 Sonardyne may assign an order number to each delivery of the Products and shall notify such order numbers to the Customer together with the estimated date by which the Products will be ready for Delivery. Each party shall use the relevant order number in all subsequent correspondence relating to the Products.
- 3.2 No terms of the Customer shall be incorporated into or otherwise form part of this Agreement, whether appearing on a purchase order, acceptance note or any other document.

### 4 WARRANTIES

- 4.1 Subject to the provisions of clause 4.3, Products shall at the date of Delivery, comply with all applicable mandatory UK & US statutory and regulatory requirements and additionally the following **Warranties** (each a "**Warranty**") are hereby given by Sonardyne with regard to the Products supplied to the Customer under this Agreement:
  - 4.1.1 During the Warranty Period, Sonardyne Software shall comply in all material respects with the applicable Specification, and Equipment supplied shall be free in all material respects from defects in components and workmanship;
  - 4.1.2 Sonardyne shall pass on the benefit of any remaining warranty regarding the performance and correction of Third Party Software enforceable by it and which it can pass to the Customer;
- 4.2 Subject to the provisions of clause 4.3, Sonardyne **Warrants** that the Services supplied to the Customer by Sonardyne under this Agreement will be performed by appropriately qualified and trained personnel, with reasonable skill and care and materially in accordance with the applicable Specification.
- 4.3 **Limitations to Warranties:**
  - 4.3.1 THE ABOVE WARRANTIES ARE GIVEN IN LIEU OF STATUTORY AND OTHER IMPLIED CONDITIONS AND WARRANTIES. ALL WARRANTIES, CONDITIONS, TERMS AND LIABILITIES EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, ON THE PART OF SONARDYNE, IN RESPECT OF COMPLIANCE WITH DESCRIPTIONS, MERCHANTABILITY, THE QUALITY, WORKMANLIKE PERFORMANCE OR THE FITNESS FOR PURPOSE OF THE PRODUCTS AND THE SERVICES WHICH ARE NOT EXPRESSLY SET OUT IN THIS AGREEMENT ARE EXCLUDED EXCEPT TO THE EXTENT SUCH EXCLUSION IS PROHIBITED OR LIMITED BY LAW AND ARE SUBJECT TO THE LIMITATIONS SET FORTH IN CLAUSES 7 AND 12.
  - 4.3.2 Sonardyne shall not be liable under Warranty for Products' failure in the event that:
    - 4.3.2.1 the Customer makes any further use of such Products after becoming aware of the defect;

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- 4.3.2.2 the defect arises because the Customer has failed to follow Sonardyne's or a manufacturer's instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good industry practice regarding the same; or the Customer has failed to install the latest version or release of Software as recommended by Sonardyne in writing if using such version or release would avoid such defect;
- 4.3.2.3 the defect arises as a result of Sonardyne following information, requirements or instructions supplied by the Customer;
- 4.3.2.4 the Customer or a third party alters or repairs such Products without the written consent of Sonardyne;
- 4.3.2.5 the defect arises as a result of fair wear and tear, any externally caused damage, whether by the Customer or otherwise (whether wilful, malicious, accidental or otherwise), by negligence of the Customer or any third party, or abnormal or otherwise inappropriate storage or working conditions.

## 5 CUSTOMER OBLIGATIONS

- 5.1 Except to the extent that Sonardyne has agreed to provide specified consultancy Services regarding Product selection, the Customer shall be responsible for its own Product selection and for ensuring the suitability of the Products for the required purpose.
- 5.2 The Customer is responsible for obtaining all necessary consents, licences and permits relating to its use of the Products and/or Services.
- 5.3 The Customer shall accept delivery and shipment of the Products in accordance with the provisions of clause 6 below.
- 5.4 The Customer shall indemnify, defend, hold harmless and release Sonardyne at all times against all claims, demands, costs (including legal costs on a full indemnity basis), expenses, losses and liabilities incurred by Sonardyne as a result of:
  - 5.4.1 Sonardyne following any designs, specifications, instructions or other reliance on Customer Material;
  - 5.4.2 any claim that the Customer Materials, or any part of them infringe any rights of any third parties, including any Intellectual Property Rights;
  - 5.4.3 the Customer having failed to install, commission or use the Products using suitably experienced and trained personnel or in accordance with instructions and licences supplied by Sonardyne and/or the manufacturer of the Products.
- 5.5 The Customer shall inspect the Products upon receipt and notify any defect in them to Sonardyne in writing within 48 hours of Shipment. If no such notification is received it shall be conclusively presumed that they are complete and in good order, and condition and fit for the purpose for which they are required and in every way satisfactory to the Customer.
- 5.6 The Customer shall allow Sonardyne or its duly authorised representative, upon reasonable notice given at any time, access to inspect the Products. The Customer shall keep an accurate list of the details of all Products including their location and shall provide an up to date copy to Sonardyne upon request.
- 5.7 The Customer shall use and maintain the Products in a skilful and proper manner and in accordance with any operating instructions issued for them, and to ensure that the Products are operated and used by properly skilled and trained personnel.
- 5.8 The Customer shall clean and keep the Products at its own expense at all times in good condition (fair wear and tear excepted) making available to Sonardyne full records thereof.
- 5.9 The Customer shall make no alteration to the Products and not remove any existing components or identification markings from the Products, unless it is removed in the ordinary course of repair and maintenance (including the removal and replacement of batteries and other consumables, which shall be the responsibility of the Customer) in which case as soon as practicable, a replacement shall be fitted.
- 5.10 The Customer shall be responsible for the safe usage of the Products and shall comply with all statutory and other obligations of all kinds in relation to the Products and the use of them and at its own expense add to or install with the Products any safety or other equipment required by any applicable law or regulation to be so added or installed for the safe use of the Products.
- 5.11 The Customer shall protect the Products against distress, execution or seizure.

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- 5.12 The Customer shall operate the Products in accordance with applicable export licencing and permit regulations and shall immediately notify Sonardyne of any breach of the same.
- 5.13 The Customer shall be liable for any loss, theft, damage or destruction of or to the Products, howsoever caused, (inclusive of whilst in transit), fair wear and tear excepted.
- 5.14 The Customer shall be liable for the provision of insurances against all liability to third persons for death, personal injury and damage to, or loss of property arising directly or indirectly, out of the use, possession, or operation of the Products for such amount as is prudent in all the circumstances.
- 5.15 The Customer shall not sell or offer for sale, assign, mortgage or pledge, any of the Products or allow the creation of any charge, encumbrance, lien, or other interest to arise over them.
- 5.16 The Customer shall be responsible for all losses and liabilities (including legal expenses on a full indemnity basis) arising from the Customer's breach of this Agreement, or from the possession or use by the Customer of the Products or their repossession.
- 5.17 The Customer shall on or before the expiration or termination of the Hire Term return the Products to Sonardyne at the Customer's cost, to such address as Sonardyne shall reasonably require (or otherwise to Sonardyne's head office). In the event of failure to so do, the Customer shall allow Sonardyne and its representatives (and shall ensure that any third parties also allow) access to any premises where the Products are located for the purpose of performing such return at the cost and expense of the Customer. The Customer shall accurately notify Sonardyne in writing of the location/s of the Products upon request.
- 5.18 The Customer shall continue to pay the Charges for the hire of the Products until returned to Sonardyne.
- 5.19 In the event that the Products are lost during the Hire Term the Customer shall pay to Sonardyne on demand the full replacement price of any lost item unless otherwise agreed between the parties.

## 6 DELIVERY AND SHIPMENT

- 6.1 **Place and means of Delivery.** Delivery of Products shall be made at Sonardyne's, and/or its specified Affiliate's or third party's premises, when Sonardyne, or its specified Affiliate or third party, advises the Customer in writing, that the Products are ready for shipment ("**Delivery**" and "**Delivery Date**" respectively).
- 6.2 **Shipment.** Following Delivery in accordance with clause 6.1, shipment shall be made as described in Sonardyne's Quotation or the Confirmation. Where Sonardyne is required to arrange for shipment, it shall do so acting as agent for the Customer, with all associated risks, costs and expenses to be borne by the Customer ("**Shipment**").
- 6.3 The Customer acknowledges that Sonardyne is not responsible for procuring or securing delivery to the end destination required by the Customer, where the Products will be installed or otherwise used.
- 6.4 Sonardyne may deliver the Products by instalments. Where the Products are delivered in instalments, each Delivery and shipment failure by Sonardyne to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat the Agreement as a whole as repudiated.
- 6.5 Sonardyne shall have no liability for any failure or delay in delivery to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this Agreement.
- 6.6 If the Customer fails to take possession of the Products otherwise than due to breach by Sonardyne, then, in relation to the uncollected or refused Products, Sonardyne shall be entitled (without prejudice to its other rights under this Agreement or at law) to:
  - 6.6.1 require the Customer to pay any costs of storage, or a reasonable charge for storage; and/or
  - 6.6.2 require the Customer to pay any Shipment Charges; and /or
  - 6.6.3 sell or hire the Products to a third party after giving reasonable period of notice (as determined by Sonardyne) to the Customer; and/or
  - 6.6.4 retain any sums paid as deposit for the Products.
- 6.7 Where a delivery note, commercial invoice, or certificate of conformity is provided, this shall be conclusive evidence that the Products were in a satisfactory condition on leaving the custody of Sonardyne.

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- 6.8 The Customer shall be responsible for obtaining all required export and import licences, clearances and any other documentation necessary for the despatch of the Products and their delivery to their end destination, except for any matters agreed in this Agreement to be the responsibility of Sonardyne.
- 6.9 Without affecting the obligation of the Customer under clause 6.8, the Customer will, if requested, notify Sonardyne, and if required provide such further evidence as Sonardyne may require, of the location of the expected end destination for each shipment of Products.
- 6.10 The Customer shall provide Sonardyne with such documentation and information as Sonardyne may require for taxation, regulatory or reporting purposes, including as required in order to answer or respond to the queries or investigations of any regulatory authority, wherever located.

### 7 WARRANTY CLAIMS

- 7.1 The provisions of this clause 7 shall apply if the Customer makes any claim that Sonardyne is in breach of Warranty.
- 7.2 Any claim under a Warranty must be notified in writing to Sonardyne before the expiry of the Warranty Period by email addressed for the attention of the Quality Manager at [warranty@sonardyne.com](mailto:warranty@sonardyne.com).
- 7.3 In the event of any claim under the Warranty:
  - 7.3.1 the Customer must promptly notify Sonardyne in accordance with clause 7.2, of the claim and in any event within 14 days of the alleged fault first arising;
  - 7.3.2 unless otherwise agreed by Sonardyne in writing, the Customer must immediately cease use of the alleged defective Product, and confirm to Sonardyne that this has been adhered to;
  - 7.3.3 the Customer must return the affected Product to the location notified by Sonardyne at its own cost;
  - 7.3.4 Sonardyne will investigate the claim and the Customer shall provide all information and assistance that may be required by Sonardyne;
  - 7.3.5 Sonardyne shall determine whether or not the Product is defective under the Warranty and if it does determine that there has been a breach of the Warranty, shall decide at its discretion to either repair or replace the defective Products or part of the defective Products;
  - 7.3.6 the Customer shall in any event be responsible for the return of the repaired or replaced Product to the Customer and for all costs associated with the detachment, decommissioning, removal, replacement and re-attachment, re-installation and re-commissioning of the repaired or replaced Products;
  - 7.3.7 Sonardyne's only liability in respect of any Product supplied in breach of the Warranty or otherwise relating to any allegation of any defect in Products supplied shall be the repair or replacement of the defective Products or part of the defective Products (or in the case of Sonardyne Software, the provision of a workaround; and in the case of Third Party Software, its obligations under clause 4.1.2) in accordance with this clause 7.

### 8 TITLE AND RISK

- 8.1 Risk of loss of or damage to Products shall pass to the Customer:
  - 8.1.1 upon Delivery, in the case of Products to be delivered under clause 6.1; or
  - 8.1.2 otherwise at the time and place agreed in writing.
- 8.2 Title to Equipment shall not at any time pass to the Customer and instead shall at all times remain with Sonardyne.
- 8.3 If the Customer becomes subject to any of the events in clause 17.1.2 then without limiting any other right or remedy Sonardyne may have, Sonardyne may at any time require the Customer to deliver up such Equipment and associated Software and, if the Customer fails to do so promptly, enter any premises in order to recover the relevant Products and the Customer shall provide all reasonable assistance to Sonardyne.

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### 9 CHARGES

- 9.1 The Charges are exclusive of amounts in respect of applicable taxes and levies and any charges or imposts of any kind including VAT, sales taxes, excise duties and import or export duties or fees. The Customer shall, on receipt of a valid invoice from Sonardyne, pay to Sonardyne such additional amounts in respect of any such amounts as are chargeable on the hire of Products and the supply of Services.
- 9.2 The Customer shall make all payments without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to Sonardyne such additional amount as will ensure that Sonardyne receives the same total amount that it would have received if no such withholding or deduction had been required unless required by law to pay the net amount, in which case the Customer shall fully co-operate with Sonardyne and shall provide such assistance and documentary evidence as requested in order for Sonardyne to re-claim the withheld tax from the relevant tax authority.
- 9.3 Charges exclude special packaging, insurance and freight/transport charges ("**Shipment Charges**"). Where Sonardyne arranges for shipment, it does so as agent for, and at the risk, of the Customer and Shipment Charges shall be levied in addition to the Charges at cost plus 15% unless otherwise expressly agreed by Sonardyne in writing in this Agreement.
- 9.4 Where the Customer is domiciled outside of the United Kingdom (UK), then the Products shall be presumed to be used by the Customer outside of the UK VAT jurisdiction, and the Customer hereby represents to Sonardyne accordingly. In the event that the Customer intends to use the Products within the UK VAT jurisdiction, then the Customer undertakes to promptly notify Sonardyne.

### 10 TERMS OF PAYMENT

- 10.1 Sonardyne shall invoice the Customer for the Products and / or Services as provided in the Agreement.
- 10.2 The Customer shall pay invoices in full and in cleared funds within 30 days of date of invoice (referred to as the "**Due Date**"). Payment shall be made to the bank account nominated in writing by Sonardyne.
- 10.3 If the Customer fails to make any payment due to Sonardyne under this Agreement by the Due Date, then such failure shall be treated as a material breach under this Agreement, and without limiting Sonardyne's remedies:
- 10.3.1 Interest may be charged by Sonardyne on any overdue amount at the rate of 3% per annum above Lloyds Bank plc's base rate from time to time.;
  - 10.3.2 Sonardyne may suspend or cancel the hire of the Products and where relevant, suspend provision of the Services;
  - 10.3.3 Sonardyne may require the Customer to pay any costs of storage, or a reasonable charge for storage, of undelivered Products;
  - 10.3.4 Sonardyne may sell or hire to a third party any Products not yet delivered to the Customer;
  - 10.3.5 Sonardyne may retain any sums paid as a deposit or advance payment for the hire of the Products.
- 10.4 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify Sonardyne in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Where only part of an invoice is disputed, the undisputed amount shall be paid on the Due Date.

### 11 INSURANCE

- 11.1 The Customer shall ensure that it has in place adequate insurance in view of its obligations and risks under this Agreement and the use of the Products by it.

### 12 LIABILITY

- 12.1 Sonardyne shall only be liable to the Customer in respect of claims notified to Sonardyne in accordance with this Agreement and in particular clauses 6 (Delivery and Shipment) and 7 (Warranty Claims) of these Terms.

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- 12.2 The liability of Sonardyne and Sonardyne Personnel are exclusively as described under clause 4 (Warranties) and clause 7 (Warranty Claims). Otherwise, Sonardyne and Sonardyne Personnel shall have no liability whatsoever towards the Customer for the provision of Products and/or Services under this Agreement, including but not limited to circumstances or events described under clause 4.3.2.
- 12.3 Any liability Sonardyne may have for claims concerning damage to the physical property (excluding the Products) of the Customer or the Customer's Personnel arising out of or in connection with this Agreement, the Products and Services, however arising, shall be limited to £2,000,000 (two million pounds sterling) in total, in respect of all claims.
- 12.4 Without prejudice to the other limitations on Sonardyne's liability in this Agreement but subject to permissibility under applicable law, the liability of Sonardyne for any claims arising out of or in connection with this Agreement, the Products and the Services, however arising, shall be limited in respect of all claims in aggregate to a sum equal to 100% of the Charges payable (exclusive of VAT) by the Customer for the hire of the relevant Products and/or provision of the relevant Services under this Agreement giving rise to the claim, or £1 million, whichever is the lesser.
- 12.5 The Customer shall indemnify, defend, hold harmless and release Sonardyne and all Sonardyne Personnel at all times against all claims, demands, costs (including legal costs on a full indemnity basis) expenses, losses and liabilities incurred by Sonardyne and Sonardyne Personnel as a result of Sonardyne providing the Products or Services.
- 12.6 Sonardyne shall have no liability to the Customer in contract or in tort or otherwise for loss, injury, damage or expense, including, without limitation, loss of earnings, profits or anticipated savings by reason of any defect in the Products or any service by Sonardyne or if the Products become unusable, however caused, and Sonardyne will not in any event be liable to replace any of the Products so that, in the event that the Products become unusable or are in any way defective then any remedy available to the Customer shall be a fair abatement of the rental payable to Sonardyne subject to the Customer giving immediate notice to Sonardyne of all relevant circumstances.
- 12.7 Notwithstanding any other provision to the contrary under this Agreement, in no event shall Sonardyne be liable for any form of indirect or consequential loss or damage, whether in contract or in tort or howsoever arising including, but not limited to, loss of revenue or profit; loss of goodwill or damage to reputation; loss of business, production or business opportunity; loss of bargain or anticipated saving; loss of data, or for corruption of data or information; the cost of detachment, decommissioning and retrieval of any products or items and the attachment or commissioning of any products or items (except where expressly agreed in writing to be part of the Services); or any costs and liabilities arising from pollution or environmental damage caused directly or indirectly by any Products or the Services.

### 13 ASSIGNMENT AND SUB-CONTRACTING

- 13.1 The Customer may not assign or transfer or sub-contract any of its rights, benefits or obligations under this Agreement without the prior written consent of Sonardyne. Sonardyne may subcontract the performance of any of its obligations to an Affiliate.

### 14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in the Products shall at all times remain vested in Sonardyne or its Affiliates, or the owner thereof. All Intellectual Property Rights arising out of Services shall at all times remain vested in Sonardyne or its Affiliates. The hire of the Products by the Customer does not transfer any rights whatsoever to the design of or Intellectual Property Rights in the Products, nor does the Customer have any licence to duplicate, manufacture or copy the Products or any of the supporting documentation supplied by Sonardyne or its Affiliates other than strictly as stated in this clause 14 or, with regard to Software, in clause 15.
- 14.2 All drawings, designs, samples and technical and other Confidential Information and materials whatsoever supplied by Sonardyne or its Affiliates at any time remain Sonardyne and its Affiliates' exclusive property, must be returned upon demand, must be treated as confidential, and must not be loaned, copied or otherwise used without the consent in writing of Sonardyne except that any obligations contained in this clause shall not prevent any disclosure of Confidential Information which is required by law or court order.

### 15 USE OF SOFTWARE

- 15.1 In consideration of the payment of the Charges by the Customer to Sonardyne, Sonardyne grants to the Customer a personal, non-exclusive licence to use the Sonardyne Software in object code form (only) in accordance with this Agreement including limitations on the use of the Sonardyne Software for the Hire Term.



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- 15.2 Except to the extent expressly permitted in writing by Sonardyne, the Customer agrees not to:
- 15.2.1 make any copies of the Sonardyne Software (in any form or media);
  - 15.2.2 share with or sub-licence, transfer, hire, rent, lease, loan, or make the Sonardyne Software or any copies of it available in any way to any third party;
  - 15.2.3 adapt, vary, modify or alter the whole or any part of the Sonardyne Software or combine, merge or incorporate the Sonardyne Software into any other program;
  - 15.2.4 disassemble, decompile, reverse engineer or create derivative works based on the whole or any part of the Sonardyne Software, or remove or circumvent any security devices present within the Sonardyne Software; nor attempt to do anything analogous to the foregoing.
- 15.3 The Customer acknowledges it has no right to have any access to the Sonardyne Software in source code form, or in unlocked coding of any kind.
- 15.4 With respect to any Third Party Software, the Customer accepts the terms of the applicable third parties' licences and maintenance agreements and shall only use the Third Party Software in accordance with the requirements of such licences and agreements. The Customer acknowledges that (without prejudice to clause 4.1.2) Sonardyne is not responsible for the functioning or performance of any Third Party Software or for any infringement claim caused by the use of Third Party Software and it is the responsibility of the Customer to enforce any rights and remedies it has under the terms of the said licence and maintenance agreements against the relevant third party.
- With respect to Third Party Software that originates from Microsoft, such Third Party Software is provided subject to the relevant Microsoft End User Licence Agreement copies of which can be found at:
- Windows 10 [https://www.microsoft.com/en-us/Useterms/OEM/Windows/10/Useterms\\_OEM\\_Windows\\_10\\_English.htm](https://www.microsoft.com/en-us/Useterms/OEM/Windows/10/Useterms_OEM_Windows_10_English.htm)
- 15.5 Where no separate third party licence agreement with regard to any specific Third Party Software is provided to the Customer in accordance with clause 15.4, or such license terms are not contained within this Agreement, then with regard only to such specific Third Party Software, the license provisions of clauses 15.1 to 15.3 shall apply as if in clauses 15.1 to 15.3 the definition "Sonardyne Software" reads "Sonardyne Software and Third Party Software".

## 16 CONFIDENTIALITY

- 16.1 Each party undertakes that it shall not at any time during the Agreement and after termination disclose to any person the Confidential Information of the other party, except as permitted by clause 16.2, and shall only use the other party's Confidential Information as required to fulfil the Agreement or to exercise its rights under it. No other rights or licenses are granted by the disclosing party to the receiving party merely by reason of disclosure of Confidential Information under this Agreement.
- 16.2 Each party may disclose the other party's Confidential Information:
- 16.2.1 to its Representatives (and in the case of Sonardyne to an Affiliate and their Representatives) who need to know such information for the purposes of carrying out that party's obligations under the Agreement, subject to compliance with confidentiality obligations similar to those set out hereunder; or
  - 16.2.2 with the disclosing party's prior written agreement; or
  - 16.2.3 as may be required by law, court order or any governmental or regulatory authority.
- 16.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party or to be implied from the Agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## 17 TERMINATION

- 17.1 Each party shall be entitled to terminate the Agreement with immediate effect by giving written notice to the other if:
- 17.1.1 that other party fails to pay any undisputed amount due under this Agreement on the required payment date (being the 'Due Date' in relation to sums owed by the Customer)

## SONARDYNE, INC.

- and remains in default not less than 10 Business Days after being notified in writing to make such payment; or
- 17.1.2 that other party ceases trading, commences or is required to commence or participates in any activity associated with debt rescheduling, administration, bankruptcy, liquidation or winding up of the other party or other party's Affiliates or subject to an attachment order on any part of its assets and such attachment order is not discharged within 14 days; or
  - 17.1.3 that other party commits a material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or
  - 17.1.4 any Force Majeure Event prevents Sonardyne from performing its obligations under this Agreement for any continuous period of three months.
- 17.2 If any of the circumstances in clauses 17.1.1 or 17.1.2 occur, this shall be a material breach of obligations for the purposes of clause 17.1.3.
- 17.3 Termination of this Agreement shall not prejudice any of the parties' rights and remedies which have accrued hereunder as at termination.

### 18 OBLIGATIONS ON TERMINATION

- 18.1 On termination, the Charges shall be immediately payable without demand.
- 18.2 Additionally, on termination of this Agreement each party shall promptly:
- 18.2.1 return to the other party all Products, equipment, materials and property belonging to the other party that the other party had supplied to it or its Affiliates in connection with the supply and hire of the Products under this Agreement;
  - 18.2.2 return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
  - 18.2.3 erase all the other party's Confidential Information from its computer systems (to the extent possible); and
  - 18.2.4 on request, certify in writing to the other party that it has complied with the requirements of this clause.

### 19 COMPLIANCE

- 19.1 The Customer shall:
- 19.1.1 not engage in any activity which could constitute bribery or corruption and shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977;
  - 19.1.2 act so as not to put Sonardyne, or its Affiliates or Representatives in breach of Sonardyne's anti-corruption policies which can be found at <https://www.sonardyne.com/ethics/anti-bribery-policy/> and, where relevant, procedures notified from time to time;
  - 19.1.3 comply with all applicable laws and regulations relating to anti-slavery and human trafficking practices including the UK Modern Slavery Act 2015 and analogous US laws.
- 19.2 In addition to its other rights and entitlements under this Agreement, Sonardyne shall be entitled to suspend performance of this Agreement in whole or in part with immediate effect if at any time (Sonardyne has reasonable cause to believe that) the Customer is in breach of these (COMPLIANCE) obligations.
- 19.3 The Customer shall indemnify, defend and hold harmless and keep Sonardyne indemnified against all sums suffered or incurred by Sonardyne and its Affiliates in respect of all and any demands, liabilities, expenses, claims, settlements or judgment sums damages of any nature suffered or incurred by Sonardyne and its Affiliates arising out of or in connection with any breach by the Customer of any of the provisions of this Clause 19 (COMPLIANCE).
- 19.4 The Customer shall bear full responsibility for its compliance with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any applicable duties and levies, as well as for compliance with all applicable export control regulations, including of the UK, the US and/or other applicable jurisdictions. The Customer further agrees as a condition of this Agreement that the Products will not be used in contravention of the terms of any applicable governmental export control or other regulation, licence, consent or permit.

## 20 SURVIVAL OF OBLIGATIONS

- 20.1 CLAUSES 12 (LIABILITY), 14 (INTELLECTUAL PROPERTY RIGHTS), 15 (USE OF SOFTWARE), 16 (CONFIDENTIALITY), 18 (OBLIGATIONS ON TERMINATION), 24 (GOVERNING LAW AND JURISDICTION) AND ANY OTHER PROVISION WHICH IS INTENDED, EXPRESSLY OR IMPLIEDLY, TO CONTINUE, OR TO COME INTO EFFECT ON TERMINATION OR EXPIRY OF THIS AGREEMENT SHALL COME INTO AND/OR CONTINUE IN EFFECT ON SUCH TERMINATION OR EXPIRY.

## 21 FORCE MAJEURE

- 21.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this Agreement so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.
- 21.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event (i) notify the other party of the nature and extent of such Force Majeure Event, and (ii) use all reasonable endeavours to remove any such causes and resume performance under this Agreement as soon as feasible.

## 22 GENERAL

- 22.1 If any provision of this Agreement is found by any competent body to be invalid or unenforceable, the other provisions shall remain in force, whilst the Agreement shall be modified so as to eliminate the invalidity or unenforceability without compromising the original intent of the parties in entering into the Agreement;
- 22.2 Any variation of this Agreement must be in writing and signed by or on behalf of the parties;
- 22.3 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy;
- 22.4 Excepting liability for fraud or fraudulent misrepresentation, this Agreement (including the Schedules attached hereto) and the documents referred to in it constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement;
- 22.5 No person who is not a party to this Agreement has any rights under it or may enforce any provision of it and no term of this Agreement shall be enforceable under the UK's Contracts (Rights of Third Parties) Act 1999 or otherwise by a person who is not a party to the Agreement;

## 23 NOTICES

- 23.1 A notice served under this Agreement shall (except as otherwise permitted under these Terms) (i) be in writing by post or fax (but not by email) in the English language, (ii) signed by or on behalf of the party giving it, and (iii) sent for the attention of the Company Secretary/or CEO to the party's registered office address.

## 24 GOVERNING LAW AND JURISDICTION

- 24.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, formation or existence (including non-contractual disputes or claims) shall be governed by, construed and interpreted in accordance with the laws of the state of Texas, excluding any conflict of law principles. The parties irrevocably agree that the Texas courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

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## PART B – SERVICES ONLY

*(Part B shall apply in addition to Part A, where Services are provided under the Agreement.)*

### Section I – General Services

#### 25 SCOPE OF SERVICES

- 25.1 The scope of any Services will be as set out in this Agreement or any separate contract referred to in this Agreement.
- 25.2 Where any Services are purchased under this Agreement:
  - 25.2.1 the Customer must provide to Sonardyne all information, facilities, instructions and responses relating to the required Services and/or associated Products or otherwise, required by Sonardyne, within a sufficient time to enable Sonardyne to perform its obligations;
  - 25.2.2 the Customer is responsible for obtaining all necessary consents, licences and permits relating to, and for the accuracy and legality of, all information provided, including all Customer Materials.
  - 25.2.3 on completion of the Services, the Customer will either be required to participate in any Sonardyne acceptance testing and to sign a Sonardyne acceptance certificate or will be provided with an engineer's visit report;
  - 25.2.4 the Services will be treated as accepted and satisfactorily completed on the signing of such certificate, the delivery of the engineer's visit report, and in any event will be treated as accepted if seven or more days has elapsed since the date that Sonardyne notified the Customer that the Services were complete.
  - 25.2.5 any support services provided by Sonardyne with regard to Products shall be subject to the support terms provided or otherwise stated on Sonardyne's website for such support.
- 25.3 In the event that Sonardyne is required to provide field engineering services under this Agreement, then the provisions of Section II – Field Engineering Services below shall apply.

#### 26 BASIS FOR PROVIDING SERVICES

- 26.1 The Customer has requested Sonardyne to supply Engineer(s) to perform the Services as described in Sonardyne's Quotation and related Confirmation.
- 26.2 Where the Services are carried out outside of Sonardyne's normal working area, or in situations that it considers that require additional protection, or offshore; then the provisions of Section II below shall apply, in addition to this Section I. **Any standard terms of the Customer on any purchase order, acceptance or other document are expressly excluded and do not form part of the Agreement.**
- 26.3 Sonardyne agrees that the Engineer shall carry out the Services using reasonable skill and care and in accordance with normal industry practice. The Customer shall be responsible to Sonardyne for any claims, costs, damages and liabilities arising out of Sonardyne or the Engineer following any directions, instructions, designs, specifications, or other reliance on Customer supplied information or material.
- 26.4 Sonardyne is not responsible for delays or changes in the location of the Customer's vessel in respect of a previously agreed embarkation at an agreed location on an agreed date and any additional Charges, costs and expenses incurred as a result of such change shall be at the risk and expense of the Customer.
- 26.5 Sonardyne shall use reasonable endeavours to accommodate requested changes to the agreed location or date and time of embarkation and timing of the Services, subject to availability of suitably qualified engineers.
- 26.6 Travel days and days when the Engineer is prevented from working due to delays on site or getting to or from the vessel or site, unavailability of the Customer's vessel, facilities or materials etc., will be charged at the applicable day rate. Chargeable days commence on the date the Engineer commences travel from his home base and ends on the date the Engineer arrives back at his home base.
- 26.7 Expenses incurred in the performance of the Services including without limitation, for visas and other documentation necessary for travel, flights, accommodation and travel, taxi fares, meals and out of pocket expenditure of the Engineer, shall be reimbursed to Sonardyne at cost +15%.
- 26.8 The Customer shall make all payments without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Customer shall,

## SONARDYNE, INC.

when making the payment to which the withholding or deduction relates, pay to Sonardyne such additional amount as will ensure that Sonardyne receives the same total amount that it would have received if no such withholding or deduction had been required unless required by law to pay the net amount, in which case the Customer shall fully co-operate with Sonardyne and shall provide such assistance and documentary evidence as requested in order for Sonardyne to re-claim the withheld tax from the relevant tax authority.

- 26.9 Customer shall supply reasonable and necessary information, facilities and assistance to Sonardyne and to the Engineer in connection with the performance of the Services. If required, the Customer shall supply all assistance and information for Sonardyne to obtain invitation letters, visas and work permits necessary for the Engineer to provide the Services, or shall itself provide the same. Without affecting its liability to Sonardyne hereunder, the Customer shall ensure that all obligations on it which need to be flowed down to and carried out by the vessel owner/operator/shipyard or any third party on its behalf shall be performed adequately by such third party.
- 26.10 The Services are anticipated to be carried out for the number of days and at the location/s stated in the Confirmation.
- 26.11 Subject to the other provisions of this Agreement, working hours are stated in the Confirmation.
- 26.12 The conditions under which the Engineer works and the hours worked shall be no less beneficial to him than those enjoyed by other members of the Customer's staff of equivalent status.
- 26.13 The Engineer shall not be asked to perform services outside of the scope of the Services.
- 26.14 Both parties shall perform their obligations in respect of the Services in accordance with all applicable laws and regulations having the force of law. In particular Customer shall ensure that all health and safety laws, rules, regulations and obligations are complied with, including those referred to in Section II below.
- 26.15 Sonardyne Engineers are supplied with normal personal protective equipment, (safety boots, overalls, hard hats, gloves and eye protection). Additional protective and other equipment shall be supplied free of charge by the Customer.
- 26.16 If there is a requirement to enter confined spaces, carry out lone working, or work in abnormal environments then it is the Customer's responsibility to conduct the necessary risk assessment and to provide the required personal safety equipment and other control measures reasonably necessary to mitigate risks, including the provision of personal gas monitors and/ or forced air if the working environment is a confined space.
- 26.17 The Customer will follow the applicable legal standards and also internationally accepted recommended standards for industry, and where relevant shipping and offshore working, with respect to health, safety and working conditions.
- 26.18 Engineers shall be authorised to refuse to or to stop work should they believe that their health and safety is being put in jeopardy due to any circumstances pertaining to the provision of the Services.
- 26.19 On completion of the Services the Customer shall if requested, ensure that any report provided by the Engineer is signed off by or on behalf of the Customer without delay.

### Section II – Field Engineering Services

#### **27 SCOPE**

- 27.1 Where Sonardyne Engineers are supplied under this Agreement to provide offshore or engineering services.

#### **28 TRAVEL**

- 28.1 The Customer shall supply reasonable and necessary information, facilities and assistance to Sonardyne and to the Engineer in connection with the performance of the Services. If required, the Customer shall supply all assistance and information for Sonardyne to obtain invitation letters, visas and work permits necessary for the Engineer to provide the Services, or shall itself provide the same.
- 28.2 Sonardyne is not responsible for delays or changes in the location of the Customer's vessel in respect of a previously agreed embarkation at an agreed location on an agreed date and any additional costs and expenses incurred as a result of such change shall be at the risk and expense of the Customer.
- 28.3 Sonardyne shall use reasonable endeavours to accommodate requested changes to the agreed location or date and time of embarkation and timing of the Services, subject to availability of suitably qualified engineers.

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- 28.4 Travel days and days when the Engineer is prevented from working due to delays on site or getting to or from the vessel or site, unavailability of the Customer's vessel, facilities or materials etc., will be charged at the applicable day rate. Chargeable days commence on the date the Engineer commences travel from his home base and ends on the date the Engineer arrives back at his home base.
- 28.5 At Sonardyne's discretion depending on the overall travel time and the opportunity for the Engineer to recover before commencing the Services, Sonardyne may book a business class or equivalent flight.
- 28.6 Sonardyne will arrange international and domestic flights for Sonardyne personnel, unless otherwise agreed in writing. The Customer shall provide safe travel from an agreed point in country to the work site or vessel at its own cost.
- 28.7 Sonardyne will review travel advice from government, the World Health Organisation and other relevant organisations before confirming the provision of the Engineer and reserves the right to decline a service request based upon this advice and to suspend or cancel any order or contract should updated advice, or the evidence of the Engineer lead Sonardyne to the conclusion that the risks to its staff, whether of death, physical injury, of crime, corruption, exposure to illness or injury, kidnapping, ransom or otherwise, are such that it will not accept the continuation of the Services.
- 28.8 In advance of acceptance of any service request or travel, Sonardyne will also require knowledge of the Customer's induction and/or "Meet and Greet" procedures for the Engineer, including arrangements for safety and security, for review prior to agreement of any service request. Sonardyne reserves the right to decline a service request or travel request if the procedures are not acceptable to Sonardyne. If adequate "Meet and Greet" provisions have not been agreed prior to the commencement of travel then Sonardyne shall have the right to delay travel of the Engineer and the commencement of the Services until there is agreement on these provisions.

### 29 ACCOMMODATION

- 29.1 The Customer shall provide accommodation and meals at the work site/on board, free of charge, including an appropriate sleeping place, bed and clean bed linen, adequate toilet and washing facilities, and adequate refreshments including drinking water and meals. The terms "appropriate" and "adequate" shall be judged by reference to standards normally applicable in Western Europe unless otherwise agreed.

### 30 WORKING HOURS

- 30.1 If the Customer believes that repeated long hours will be required then it is its obligation prior to the commencement of the Services to request the appropriate number of Engineers and the Customer shall be responsible for any consequent delays, faults, errors and health and safety issues arising from lack of staff.
- 30.2 In the interests of health and safety, the standard working day is no more than 12 hours. This may be exceeded in extreme circumstances at the discretion of the Engineer, but sufficient recovery time must be provided before the following shift commences. In exercising discretion the Engineer and Sonardyne shall have regard to the provisions of applicable law and health and safety provisions, including the Maritime Labour Convention relating to hours of work and rest. The Engineer and Sonardyne shall not be obliged to regard the economic considerations of the Customer as being extreme circumstances.

### 31 REPATRIATION

- 31.1 The Customer shall provide free of charge, emergency repatriation from a vessel or work site to a place of safety in the event of circumstances warranting emergency repatriation including without limitation damage or danger to the vessel or work site, sickness, injury, death, risk of infection, emergency, war, insurgency, civil unrest or natural disaster and shall perform such obligations to the fullest extent reasonably possible notwithstanding the existence of a Force Majeure Event.
- 31.2 In the case of the Engineer having a medical emergency on board a vessel or work site, then the Customer shall have the Engineer transferred from the vessel or work site to an agreed local hospital. Sonardyne will arrange any necessary emergency repatriation from the hospital back to the Engineer's home country.

### 32 GENERAL HSE AND WORKING CONDITIONS

- 32.1 Sonardyne Engineers are supplied with normal personal protective equipment, (safety boots, overalls, hard hats, gloves and eye protection). Additional protective and other equipment shall be supplied free of charge by the Customer.

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- 32.2 If there is a requirement to enter confined spaces, carry out lone working, or work in abnormal environments then it is the Customer's responsibility to conduct the necessary risk assessment and to provide the required personal safety equipment and other control measures reasonably necessary to mitigate risks, including the provision of personal gas monitors and/ or forced air if the working environment is a confined space.
- 32.3 The Customer will follow the applicable legal standards and also internationally accepted recommended standards for industry, shipping and offshore working, with respect to health, safety and working conditions.
- 32.4 Engineers shall be authorised to refuse to or to stop work should they believe that their health and safety is being put in jeopardy due to any circumstances pertaining to the provision of the Services.

### **33 ADDITIONAL CUSTOMER RESPONSIBILITIES**

- 33.1 The Customer shall be responsible for (i) Supplying a safe working environment and system of work at its work site; (ii) Treating the Engineer in no lesser way than it treats its own staff; and (iii) Complying with all applicable laws and regulations including those of the Maritime Labour Convention.

### **34 COMMUNICATIONS AND SIGN OFF**

- 34.1 Both Parties shall provide adequate and timely communication with the other.
- 34.2 On completion of the Services the Customer shall if requested, ensure that the report provided by the Engineer is signed off by or on behalf of the Customer without delay.

### **35 FLOW DOWN OF CUSTOMER RESPONSIBILITIES**

- 35.1 Without affecting its liability to Sonardyne hereunder, the Customer shall ensure that all obligations on it which need to be flowed down to and carried out by the vessel owner/operator/shipyard or any third party on its behalf shall be performed adequately by such third party.

END OF TERMS