



**storm**  
intelligent communications

**Storm Intelligent Communications Ltd**

Terms and Conditions

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## SCHEDULE 1

These terms and conditions are incorporated into the agreement with each of Storm's customers. The agreement between Storm and its customers is made when each customer signs the e-Order Form (see Part 1 Schedule 1) which contains the Key Commercial Information in relation to its agreement with Storm.

### Parties

- (1) **STORM INTELLIGENT COMMUNICATIONS LIMITED**, a company incorporated and registered in England and Wales with company number 07455436, whose registered office is at Cardale House Cardale Court, Beckwith Head Road, Harrogate, North Yorkshire, HG3 1RY] ("**Storm**"); and
- (2) The customer whose name and address is set out in the E-Order Form (**the "Customer"**)

### BACKGROUND

- (A) Mobile Tornado has developed and owns the PTT Intellectual Property Rights.
- (B) By a master licence agreement dated 1 July 2020 between Mobile Tornado and Storm ("**the 2020 Licence**"), Mobile Tornado appointed Storm as a reseller of the PTT Software in Europe, the Middle East and Africa and granted it a licence of the PTT Software Intellectual Property Rights so as to enable Storm to grant sub-licences of the PTT Software to its own customers in Europe, the Middle East and Africa.
- (C) Customer wishes Storm to (a) grant it an end user licence of the PTT Software and (b) support its use of the PTT Software and the PTX Service and (c) provide it with the Hardware. Storm is prepared to do the same, subject always to the terms of this Agreement.
- (D) This Agreement also sets out the basis on which Customer End Users may use the PTT Client on Supported Devices.

**NOW IT IS HEREBY AGREED** as follows:-

#### 1. INTERPRETATION

1.1 The definitions set out in this clause shall apply to this Agreement:-

**"Agreement"** means this agreement, the introduction section above and any schedules to it.

**"Affiliate"** means in relation to either party, each and any Subsidiary or Holding Company of that party and each and any Subsidiary of a Holding Company of that party.

**"App Retailer Terms and Conditions"** means the standard licence terms and conditions that apply to app downloads when purchased through an online retailer such as the App Store (<https://www.apple.com/uk/ios/app-store/>) or the Google Play Store (<https://play.google.com/store>).

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**"Commencement Date"** has the meaning set out in the Key Commercial Terms in the e-Order Form.

**"Confidential Information"** means information of commercial value, in whatever form or medium, disclosed by one party to the other party in connection with this Agreement, including commercial or technical know-how, technology, information pertaining to business operations and strategies, information pertaining to customers, pricing and marketing and, for clarity, including (in the case of Storm's information) information relating to the PTT Software, PTT Client App and the PTX Services or any of their constituent parts and the source code relating to the PTT Software and PTT Client App or any parts of it. For the avoidance of doubt any of the Documentation, which is widely publicly available, shall not constitute Confidential Information but the Intellectual Property Rights in it belong to Storm and/or Mobile Tornado and are subject to the rights and restrictions set out in this Agreement.

**"Customer Employee"** means an individual engaged, under a contract of service with the Customer from time to time, as an employee as that term is defined in section 230(2) of the Employment Rights Act 1996.

**"Customer End Users"** means Customer Employees and Permitted Contractors, who use the PTT Client App in connection with their carrying out of their duties as employees and Permitted Contractors in the service of the Customer.

**"Customer Equipment"** means the computer and IT equipment of the Customer, as may be more particularly described in the e-Order Form and in Part 1 of Schedule 1 to this Agreement.

**"Customer Site"** means the principal premises from which the Customer will carry out its management of End User use of the PTX Services, as notified to Storm in writing from time to time by the Customer.

**"Customer Type"** refers to the status of the Customer as either a SaaS Customer or On-premise Customer, as set out in the Key Commercial Terms in the e-Order Form.

**"Data Protection Legislation"** means the General Data Protection Regulation ((EU) 2016/679) (if still in force in the Territory) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the Territory.

**"Delivery Date"** has the meaning set out in the Key Commercial Terms in the e-Order Form.

**"Documents"** means the operating manuals, user instruction manuals, user guides, technical literature and all other related materials in human-readable or machine-readable forms to be supplied by Storm to the Customer and updated from time to time, in all cases relating to the use of the PTT Software.

**"End User Licence"** means that agreement at Part 4 of Schedule 1.

**"e-Order Form"** means the Order Form signed by each customer which incorporates these terms and conditions, a pro forma copy of which is in Part 1 of Schedule 1.

**"Hardware"** means that hardware specified in Part 3 of Schedule 1 and in the e-Order Form.

**"Holding company"** means a "holding company" as defined in section 1159 of the Companies Act 2006.

**"Initial Term"** has the meaning set out in the Key Commercial Terms in the e-Order Form.

**"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyrights and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

**"Key Commercial Terms"** means the specific commercial terms, applicable to the Agreement with each customer, as set out in Part 1 of Schedule 1 to this Agreement and in the e-Order Form.

**"Maintenance Release"** means a release of the PTT Software or the PTT Client App which corrects faults, adds functionality or otherwise amends or upgrades the PTT Software or the PTT Client App, but which does not constitute a New Version.

**"Mobile Tornado"** means Mobile Tornado Group plc, a company registered in England and Wales under No. 05136300, whose registered office is at Cardale House Cardale Court, Beckwith Head Road, Harrogate, North Yorkshire, HG3 1RY.

**"New Version"** means any new version of the PTT Software or the PTT Client App which from time to time is publicly marketed and offered for purchase by Storm in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**"On Premise Customer"** means a customer running MT IPRS Software within the company's *data centre*.

**"Payment Frequency"** has the meaning set out in the Key Commercial Terms in the e-Order Form.

**"Performance Specification"** means those acceptable performance characteristics of the PTT Software delivering the PTX Services as set out in Part 5 of Schedule 1 to this Agreement.

**"Permitted Contractor"** means an individual who, although not a Customer Employee, is providing services to the Customer of a kind that require such person to use the PTX Services so that such person can provide such services to the Customer in an efficient and safe manner.

**"Personal Data"** means data subject to protection under the Data Protection Legislation in the Territory.

**"Price"** means the price to be paid for the Hardware, set out in the Key Commercial Terms and in the e-Order Form.

**"PTT Client App"** means the End User PTT software application, known as Instant Talk PTT, designated to run on a mobile device or a personal computer, and available from Google Play via the link:

<https://play.google.com/store/apps/details?id=com.MobileTornado.Main>

and any Maintenance Releases and New Versions of the same, as may be released by MT from time to time.

**"PTT Software"** means all those computer software modules listed in Part 2 of Schedule 1 to this Agreement and any Maintenance Releases of the same, which are provided by Storm to the Customer, from time to time, during the Term.

**"PTT Software Intellectual Property Rights"** means Mobile Tornado's Intellectual Property Rights subsisting in relation to the PTT Software.

**"PTX Service"** means the Push to Talk over Cellular solution of Mobile Tornado comprising the PTT Client App connected to a PTT service.

**"Remittance Currency"** has the meaning set out in the Key Commercial Terms and in the e-Order Form.

**"Renewal Periods"** has the meaning set out in the Key Commercial Terms in the e-Order Form.

**"SaaS Customer"** means a licensee of the PTT Software, which is hosted on Mobile Tornado or Storm servers rendering the PTT over cellular service in the form of Software as a Service (SaaS).

**"SLA"** means the service level agreement at Part 7 of Schedule 1 to this Agreement.

**"Subsidiary"** means a "subsidiary" as defined in section 1159 of the Companies Act 2006.

**"Subscription Fees"** means those subscription fees, set out in the Key Commercial Terms in the e-Order Form.

**"Support Services"** means the maintenance and support services to be provided by Storm under this Agreement including those services described in clause 6.

**"Supported Devices"** means those devices authorised and approved by Mobile Tornado as being suitable for use with the PTT Software, a list of which (which may be amended or updated from time to time) is at:

<https://www.mobiletornado.com/ecosystem/supported-devices/>

**"Storm's Bank Account"** has the meaning set out in the Key Commercial Terms in the e-Order Form.

**"Term"** means the Initial Term in the e-Order Form and, subject to clause 14 of this Agreement, any Renewal Periods, subject always to the remaining provisions of this Agreement;

**"Territory"** has the meaning set out in the Key Commercial Terms in the e-Order Form.

## **2. SUPPLY OF PTT SOFTWARE & THE PTT CLIENT APP**

- 2.1 The Customer's Customer Type is as set out in the Key Commercial Terms.
- 2.2 Storm shall, within 30 days of the Commencement Date, deliver and/or install and/or make available for download on the Customer Equipment the PTT Software in accordance with the provisions of Part 2 of Schedule 1. Risk in any tangible media on which the PTT Software is delivered shall pass on delivery.
- 2.3 It is hereby agreed and declared that Customer End Users shall use the PTT Client App under the terms of the End User Licence. As between (a) Storm on the one hand and (b) the Customer or any Customer End User on the other hand, it is hereby agreed and declared that the terms of the End User Licence shall prevail over any App Retailer Terms and Conditions to the extent of any conflict with such terms and conditions.

## **3. DOCUMENTS**

- 3.1 Storm shall provide to the Customer, from time to time, copies of the Documents containing sufficient up-to-date information to enable (a) the proper and effective use of the PTT Software and the PTX Service by the Customer and (b) the proper and effective use of the PTX Services and the PTT Client App by Customer End Users. These Documents may be supplied in electronic form.
- 3.2 The Customer shall not make any modification to or otherwise alter the Documentation. In the event that the Customer reasonably requires modification or alteration to the Documentation, it shall request such modifications from Storm, who shall produce them within a reasonable period of time at its own cost unless otherwise agreed.

- 3.3 The Customer may make such further copies of the Documents as are reasonably necessary for the use of the PTT Software, the PTT Client App and the PTX Services. The Customer shall ensure that all of Storm's or Mobile Tornado's proprietary notices are reproduced in any such copy.
- 3.4 The Customer may provide copies of the Documents to any third party who need to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with clause 9.3(c) unless exempt therefrom under the provisions of clause 9.4.

#### **4 LICENCE**

- 4.1 Storm hereby grants the Customer a personal, non-exclusive licence of the PTT Software Intellectual Property Rights, in the Territory for the Term, so as to enable the Customer to deliver and manage the delivery of the PTX Service to Customer End Users.
- 4.2 The Customer and Customer End Users shall be permitted to load and run the following modules of the PTT Software on the number of devices agreed between Storm and the Customer:-
- (a) MT PTT Client App - on devices of Customer Employees.
  - (b) MT PTT Client Add-ons – on devices of Customer Employees.
  - (c). MDC Dispatch Console – on personal computers of Customer Employees.
  - (d). MT Software Development Kit (SDK) for Android MDC Dispatch Console – on personal computers of Customer Employees.
  - (e). Interactive Team Organiser (ITO) – on personal computers of Customer Employees
  - (f). IPRS Software – on a server at the Customer Site but only if the Customer is an On Premise Customer.
- 4.3 In relation to scope of use:
- (a) use of the PTT Software shall be restricted to use of the PTT Software in object code form;
  - (b) the Customer may not use the PTT Software other than as specified in clause 4.1, without the prior written consent of Storm and the Customer acknowledges that additional fees may be payable on any change of use approved by Storm;



- (c) the Customer may make a backup copies of the PTT Software as may be reasonably necessary for its lawful use. The Customer shall record the number and location of all copies of the PTT Software and take steps to prevent unauthorised copying of the same;
- (d) except as expressly stated in clause 4.3(c), the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the PTT Software in whole or in part;
- (e) by way of derogation from clause 4.3(d), the Customer may not decompile the whole or any part of the PTT Software nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to obtain information necessary to create an independent program that can be operated with the PTT Software or with another program ("**Permitted Objective**"), and provided (A) that the Customer:-
  - (i) has requested that Storm carry out such action or provide the information necessary for the Permitted Objective (and has agreed to meet Storm's reasonable commercial fees and pay its reasonable costs in doing so) before undertaking any such de-compilation;
  - (ii) confines the decompiling to such acts as are necessary to achieve the Permitted objective;
  - (iii) only supplies the information obtained by the decompiling to persons to whom it is necessary to supply it in order to achieve the permitted objective;
  - (iv) does not use the information to create any software that is substantially similar in its expression to the PTT Software;
 and also provided (B) that Storm:-
  - (i) has indicated that it is not prepared to carry out such action or provide such information on such basis, within a reasonable period of written request from Customer; and
  - (ii) Storm has not previously provided such information to the Customer.

4.4 The Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of this Agreement in whole or in part;
- (b) allow the PTT Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this Agreement,

without the prior written consent of Storm, such consent not to be unreasonably withheld or delayed.

- 4.5 Storm may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Agreement, provided it gives written notice to the Customer.
- 4.6 The Customer shall:
- (a) ensure that the number of PTT different modules of the PTT Software does not exceed the numbers agreed between the parties.
  - (b) ensure that Customer End Users only install and use the PTT Client App on Supported Devices.
  - (c) notify Storm as soon as it becomes aware of any unauthorized use of the PTT Software or the PTT Client App by any person.
- 4.7 The Customer shall permit Storm to inspect and have access to any premises (and to the computer equipment located there) at or on which any part of the PTT Software is being kept or used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that Storm provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## **5 SUPPLY OF HARDWARE**

- 5.1 Storm shall sell and the Customer shall buy the Hardware free from all liens, charges and encumbrances.
- 5.2 To the extent that the benefit of any warranties made by the manufacturer of the Hardware to Storm (or its agent) can be assigned to the Customer, Storm shall, if requested by the Customer and at the cost of the Customer, assign them to the Customer.
- 5.3 Until such assignment, Storm shall co-operate with the Customer in any reasonable arrangements to provide the Customer with the benefit of such warranties or like conditions including enforcement at the cost of and for the benefit of the Customer.
- 5.4 The Customer shall pay the Price on the Commencement Date. Payment shall be made into Storm's Bank Account nominated in writing by Storm. The Price:
- (a) excludes amounts in respect of VAT, which the Customer shall additionally be liable to pay Storm at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) includes all costs of packaging, delivery and carriage.
- 5.5 Storm shall issue the Customer with an invoice for the Price plus VAT at the prevailing rate (if applicable) upon the customer's signature of the e-Order Form. Storm shall ensure that the invoice includes the date of the sale, the invoice number, the Customer's order number, Storm's VAT registration number, and any supporting documentation that the Customer may reasonably require.

- 5.6 Storm shall deliver the Hardware and Documentation to the Customer at the Customer Site on the Delivery Date, during Storm's usual business hours.
- 5.7 If the Customer fails to take delivery of the Hardware when due, Storm may charge reasonable costs of storage from the Delivery Date until delivery is completed.
- 5.8 The Delivery Date is approximate only, and the time of delivery is not of the essence. Storm shall not be liable for any delay in delivery of the Hardware that is caused by:
- (a) events, circumstances or causes beyond its reasonable control; or
  - (b) the Customer's failure to provide Storm with adequate delivery instructions or any other instructions that are relevant to the sale of the Hardware.
- 5.9 Delivery is completed on the completion of the unloading of the Hardware at the Delivery Location.
- 5.10 On delivery of the Hardware to the Customer, the Customer shall sign an acknowledgement of receipt.
- 5.11 The risk of damage to or loss of the Hardware shall pass to the Customer on completion of delivery.
- 5.12 The title to the Hardware shall pass to the Customer only on payment in full (in cash or cleared funds) of the Price.

## **6 SUPPORT SERVICES**

- 6.1 Storm will provide the Customer and Customer End Users with all Maintenance Releases, in respect of any Storm software loaded on to devices either may possess, generally made available to its customers. Storm warrants that no Maintenance Release will adversely affect the then existing functionality of the PTT Software, the PTT Client App or their ability to deliver the PTX Service. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt and shall insure that its End Users do the same.
- 6.2 Storm may from time to time supply the Customer and Customer End Users with New Releases, in respect of any Storm software loaded on to devices either may possess, in machine-readable form together with related amendments to the Documents. Storm may make such New Releases available for downloading over the internet and will promptly notify the Customer and End Users when such downloads are available.
- 6.3 During the Term, Storm shall provide maintenance and support services subject to and in accordance with the terms specified in the SLA.

- 6.4 For the avoidance of doubt, it is hereby agreed and acknowledged that the Licensor, at its sole discretion and subject to applicable law (including, to the extent applicable, the GDPR), shall have the power to make any changes in the Licensor's database of End Users (including any associated provisioning portal) ("System"), provided, however, that End Users data shall not be changed or corrupted. In case of any failure to timely pay the Price or the Subscription Fees due to the Licensor by the Licensee, the Licensor shall have the right, without derogating from any other remedy, to deactivate End Users in the System.
- 6.5. Nothing stated in this Agreement shall be construed as imposing an obligation or warranty by Storm to provide support services of any kind directly to Customer End Users. Without derogating from the generality of the foregoing, Storm shall not be required (nor liable) to provide maintenance and support services directly to Customer End Users.
- 6.6 Storm shall provide training to the Customer on the basis set out in the Key Commercial Terms in the e-Order Form.

## **7 SUBSCRIPTION FEES**

- 7.1 During the Term, Storm shall deliver to the Customer invoices for expired relevant periods in accordance with the Payment Frequency: so that for example if the Payment Frequency is monthly then Storm shall send to the Customer invoices monthly.
- 7.2 The Customer shall, during the Term, pay Storm the Subscription Fees, by wire transfer, into the Storm Bank Account in accordance with the Payment Frequency in arrears in the Remittance Currency within 15 Business Days after receipt of the relevant invoice from Storm.
- 7.3 If the Customer fails to make any payment due to Storm under this Agreement by the due date for payment, then without limiting Storm's remedies under clause 14, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. Any and all payments under this Agreement shall be made free and clear and without any withholding or deduction of any and all present or future taxes, levies, imposts, deductions, charges, or withholdings, without exception.
- 7.4. The Subscription Fees stated in Part 1 of Schedule 1 and in the e-Order Form are:-
- (a) exclusive of VAT (VAT shall be borne by the Customer, if applicable) and are subject to change by Storm at its sole discretion on thirty (30) days' written notice;

- (b) are exclusive of any and all custom, levies and any and all other expenses, which may be imposed by any competent authority, with respect to the export, import, shipping, delivery or use of the PTT Software or Hardware, all of which will be borne solely by the Customer.

7.5 Without derogating from Storm's right to demand payment of the Subscription Fees (and issue respective invoices with respect thereto) in accordance with the terms of this Agreement and any other remedy available to it under the Agreement and/or applicable law, should the Customer fails to fully and timely pay any part of the Subscription Fees or any other monetary obligation set forth herein, Storm shall have the right to immediately cease the provision of the maintenance and support services referred to in clause 6 of this Agreement and to terminate the licences granted by clause 4 of this Agreement.

## 8. DATA PROTECTION

8.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Storm is the data processor (where "**Data Controller**" and "**Data Processor**" have the meanings as defined in the Data Protection Legislation).

8.2 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to Storm for the duration and purposes of this Agreement.

8.3 Storm shall, in relation to any Personal Data processed in connection with the performance by Storm of its obligations under this Agreement:

- (a) process that Personal Data only on the written instructions of the Customer unless Storm is required to do otherwise by law. If it is so required Storm shall promptly notify the Customer before processing the Personal Data unless prohibited by law;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all Storm personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) where required by Customer to transfer Personal Data outside of the European Economic Area (including but not limited to the USA), require the Customer to confirm that such transfer shall be necessary for the performance by Storm of its obligations under this Agreement. In such instance, the following conditions shall be fulfilled:
  - (i) the Customer shall provide Storm with appropriate safeguards in relation to the transfer. Such safeguards shall include the requirement that the Customer be compliant with the US/EU Privacy Shield;
  - (ii) the Customer shall ensure that data subjects shall have enforceable rights and effective legal remedies;
  - (iii) the Customer shall comply with its obligations under the Data Protection Legislation and the US/EU Privacy Shield by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) Storm shall comply with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by applicable law to keep the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8.

## 9. CONFIDENTIALITY AND PUBLICITY

9.1 Each party undertakes not to use the Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement ("**Permitted Purposes**").

9.2 In relation to the Customer's Confidential Information:

- (a) Storm shall treat as confidential all Confidential Information of the Customer supplied under this Agreement. Storm shall not divulge any such Confidential Information to any person, except to its own employees and then only to those employees who need to know it for the Permitted Purposes. Storm shall ensure that its employees are aware of, and comply with, this clause 9 and
- (b) Storm may provide any of its subcontractors with such of the Customer's Confidential Information as they need to know for the Permitted Purposes, provided that such sub-contractors have first entered into a written obligation of confidentiality owed to Storm in terms similar to clause 9.2(a) (which Storm shall ensure is adhered to).

9.3 In relation to Storm's Confidential Information:

- (a) the Customer shall treat as confidential all Confidential Information of Storm contained or embodied in the PTT Software, the PTT Client App or the Documents, or otherwise supplied to the Customer during the performance of this Agreement;
- (b) the Customer shall not, without the prior written consent of Storm, divulge any part of Storm's Confidential Information to any person other than to Customer Employees and Permitted Contractors, who need to know it for the Permitted Purposes; and
- (c) the Customer undertakes to ensure that the persons mentioned in clause 9.3(c) are made aware, before the disclosure of any part of Storm's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause 9.3(b) (which the Customer shall ensure is adhered to).

9.4 The restrictions imposed by clauses 9.1-9.3 above shall not apply to the disclosure of any Confidential Information which:

- (a) is now in, or subsequently comes into, the public domain otherwise than as a result of a breach of any of the obligations imposed by this clause 9;
- (b) before any negotiations or discussions leading to this Agreement was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or
- (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary);
- (d) the receiving party can demonstrate was independently developed by it, without reference to the disclosing party's Confidential Information.

- 9.5 Each party shall notify the other party if any of its staff connected with the provision or receipt of the PTX Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 9.6 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 9.7 This clause 9 shall remain in full force and effect, despite any termination of this Agreement.

## **10. EXPORT AND COMPLIANCE WITH POLICIES**

- 10.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 10.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
  - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## **11. STORM'S WARRANTIES**

- 11.1 Storm warrants that:
- (a) the PTT Software and Documents are proprietary to Mobile Tornado and that it has the right to license the PTT Software Intellectual Property Rights to the Customer and the Intellectual Property Rights in the PTT Client App to Customer End Users and to provide the Support Services to the Customer; and
  - (b) to the best of its knowledge, information and belief the Customer's use of the PTT Software and the PTX Services does not infringe the Intellectual Property Rights of any third party.



- 11.2 The warranties set out in clause 11.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose. Other than as specified in clause 11.1, the PTT Software, the PTT Client App and the Hardware are provided *as is*, with all faults and Storm makes no warranty or representation that any of the PTT Software, the PTT Client App and any Hardware will meet the Customer's requirements or work in combination with any hardware or applications software provided by third parties, that the operation of the PTT Software, the PTT Client App and any Hardware will be uninterrupted or error-free, or that any defects in the PTT Software, the PTT Client App and any Hardware will be corrected or correctable. Storm disclaims all warranties, express or implied, including warranties of merchantability and fitness for a particular purpose. No oral or written information or advice given by Storm or any of Storm's employees or representatives will create a warranty.
- 11.3 Storm does not warrant or guarantee that it will be able to rectify all defects or errors, nor that any defects or errors, which do not materially affect the Customer's use of the PTX Services, will be corrected before the issue of the next New Release.
- 11.4 Any unauthorised modifications, use or improper installation of the PTT Software, the PTT Client App and the Hardware by, or on behalf of, the Customer shall render all Storm's warranties and obligations under this Agreement null and void.
- 11.5 Storm shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than by normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of Storm.
- 11.6 The Customer accepts responsibility for the selection of the PTT Software and PTT Client App and the Hardware to achieve its intended results and acknowledges that the PTT Software, the PTT Hardware and the Hardware have not been developed to meet the individual requirements of the Customer.
- 11.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## 12 LIMITS OF LIABILITY

12.1 Except as expressly stated in clause 12.4, Storm shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer) or any Customer End User, 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 fall within any of the following categories:

- (i) special damage even if Storm was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill;
- (vi) loss or corruption of data;

provided that this clause 12.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 12.2 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 12.1.

12.2 The total liability of Storm, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the total amount of the Subscription Fes paid by the time the liability arose.

12.3 The Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Storm shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

12.4 The exclusions and limitations set out in clause 12.1-12.3 shall apply to the fullest extent permissible at law, but Storm does not exclude liability for:

- (a) death or personal injury caused by the negligence of Storm, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 save to the extent that the same can be lawfully excluded; or
- (d) any loss or corruption (whether direct or indirect) of data or information;

(e) any other liability which may not be excluded by law.

12.5 All references to "Storm" in this clause 12 shall, for the purposes of this clause, be treated as including all employees, subcontractors and agents of Storm and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause 12.

### **13 INTELLECTUAL PROPERTY RIGHTS**

13.1 The Customer acknowledges that all PTT Software Intellectual Property Rights and the Intellectual Property Rights in the PTT Client App and any Maintenance Releases and New Releases belong and shall belong to Mobile Tornado or Storm (as the case may be), and neither the Customer nor Customer End Users shall have any rights in or to the same other than the right to use the same in accordance with the terms of this Agreement.

13.2 Storm undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the PTT Software or the PTT Client App (or any part thereof) in accordance with the terms of this Agreement infringes the Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, the foregoing shall not apply where the Claim in question is attributable to possession or use of the PTT Software or the PTT Client App (or any part thereof) by the Customer or Customer End Users other than in accordance with the terms of this Agreement, use of the PTT Software or PTT Client App in combination with any hardware or software not supplied or specified by Storm if the infringement would have been avoided by the use of the PTT Software or PTT Client App not so combined, or use of a non-current release of the PTT Software or PTT Client App.

13.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, Storm's obligations under clause 13.2 are conditional on the Customer:

- (a) as soon as reasonably practicable, giving written notice of the Claim to Storm, specifying the nature of the Claim in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Storm (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) giving Storm and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Storm and its professional advisers to examine them and to take copies (at Storm's expense) for the purpose of assessing the Claim; and

- (d) subject to Storm providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as Storm may reasonably request to avoid, dispute, compromise or defend the Claim.

13.4 If any Claim is made, or in Storm's reasonable opinion is likely to be made, against the Customer, Storm may at its sole option and expense:

- (a) procure for the Customer the right to continue to use the PTT Software or the PTT Client App (or any part thereof) in accordance with the terms of this Agreement;
- (b) modify the PTT Software or the PTT Client App so that it ceases to be infringing;
- (c) replace the PTT Software or the PTT Client App with non-infringing software; or
- (d) terminate this Agreement immediately by notice in writing to the Customer,

provided that if Storm modifies or replaces the PTT Software or the PTT Client App, the modified or replacement software must comply with the warranties contained in clause 11 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Agreement been references to the date on which such modification or replacement was made.

13.5 Notwithstanding any other provision in this Agreement, clause 13.2–13.4 shall not apply to the extent that any Claim or action referred to in those clauses arises directly or indirectly through the Customer's or any Customer End User's possession or use of any third-party Software.

13.6 This clause 13 provides the Customer's exclusive remedy and Storm's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 12.

## **14 TERMINATION**

14.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party commits a material breach of any other term of this Agreement which is not capable of being remedied;

- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or

14.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

14.3 On termination for any reason:

- (a) all rights granted to the Customer under this Agreement shall cease;

- (b) the Customer shall cease all activities authorised by this Agreement including all use of the PTX Services and shall ensure that the Customer End Users stop using the same;
- (c) the Customer shall immediately pay to Storm any sums due to Storm under this Agreement; and
- (d) the Customer shall immediately destroy or return to Storm (at Storm's option) all copies of the PTT Software then in its possession, custody or control and, in the case of destruction, certify to Storm that it has done so and shall ensure that all Customer End Users delete any copies of the PTT Client App on their devices.

14.4 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement including, as appropriate clause 8, 9 and 12 shall remain in full force and effect.

## **15 ASSIGNMENT AND SUBCONTRACTING**

15.1 The Customer shall not, without the prior written consent of Storm, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

15.2 Storm may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **16 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.

## **17. REMEDIES**

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

## **18 ENTIRE AGREEMENT**

18.1 This Agreement, the schedules and the documents annexed as appendices to this Agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

- 18.2 Each party acknowledges that, in entering into this Agreement, it does not rely and has not relied on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) ("**Representation**") other than as expressly set out in this Agreement.
- 18.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.
- 18.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **19. VARIATION**

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

## **20. SEVERANCE**

- 20.1 If any provision or part-provision of this Agreement 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 Agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **21. CONTRACT FORMATION**

A binding agreement between Storm and each of its customers is made when each customer signs the e-Order Form which incorporates these terms and conditions.

## **22. THIRD- PARTY RIGHTS**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **23. NO PARTNERSHIP OR AGENCY**

- 23.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 24. FORCE MAJEURE

24.1 "**Force Majeure Event**" means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) disease, epidemic or pandemic (including but not limited to COVID-19);
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) non-performance by suppliers or subcontractors; and
- (h) interruption or failure of utility service.

24.2 Provided it has complied with the provisions of clause 24.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

24.3 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

24.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.



24.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months the Party not affected by the Force Majeure Event may terminate this Agreement by giving 30 days' written notice to the Affected Party.

## 25. NOTICES

25.1 Any notice required or authorised to be given hereunder ("**Notice**") shall be served personally, sent by pre-paid registered letter addressed to the relevant party at the address referred to below or by email sent to the relevant Party at the email address referred to below, or such other address or email address as may from time to time be notified by Notice to the other Party for this purpose:

In the case of Storm:

FAO: Sam Gascoyne

to the address for Storm written above

Email: sam@storm.co.uk

In the case of the Customer:

to the email address for the Customer shown in the e-Order Form.

25.2 Any Notice given pursuant to clause 25.1 shall:

- (a) when delivered personally be deemed to have been received upon delivery;
- (b) when sent by registered post (and in the absence of evidence of earlier receipt), be deemed to be delivered 3 days after despatch provided that the Party giving Notice proves that the registered envelope containing the Notice was properly addressed; and
- (c) where served by email be deemed to be served when sent to the correct email address on a Business Day save that where a delivery failure or out of office notification or other communication indicating that the email has not been received read or opened is received by the Party serving the notice, the notice shall be deemed not to have been sent. Where the email is sent on a day other than a Business Day the email will be deemed to have been sent on the next Business day after the day on which the email is sent.

25.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**26. GOVERNING LAW AND JURISDICTION**

- 26.1 This Agreement 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.
- 26.2 The parties 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 this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 1

### Part 1

#### e-Order Form (incorporating Key Commercial Terms)

Order No. [                      ]

By signing this Order Form a binding agreement is made between Storm Communications Limited (“Storm”) and (the “Customer”).

The agreement incorporates Storm’s standard terms and conditions which can be accessed via this link: [www.storm.co.uk/legal](http://www.storm.co.uk/legal). Alternatively, a copy is available from Storm upon request from this email address: [hello@storm.co.uk](mailto:hello@storm.co.uk).

The Customer agrees to purchase the following hardware, software and training and support services and the agreement between us will incorporate and be based upon the following Key Commercial Terms:

#### Key Commercial Terms

Customer Name	
Customer Address	
Customer Email Address	
Customer Type	SaaS Customer/On-premise Customer
Customer Equipment	
Commencement Date	
Delivery Date	
Delivery Location	
Initial Term	
Payment Frequency	
Renewal Periods	
Storm’s Bank Account	
Territory	

#### Hardware

Devices	
Price (exclusive of VAT)	
Remittance and Currency	

#### Training Costs & Support:

Training and Support	
Price (exclusive of VAT)	

**Subscription Fees (i.e. total License Costs – see below)**

No of Licenses	Cost Per License Per Annum	Total Cost Per Annum (exclusive of VAT)

**Dispatch Console Licence Fees**

Dispatch Console - MDC2000X	No of Licenses	Monthly fee Per MDC2000 £	Total Cost Per Annum (exclusive of VAT)
MDC2000 x Entry Level - one channel only (Radio Group)			
Additional simultaneous channels above the first channel			

.....

.....

**Storm Communications Limited**

**Customer**

Dated:

Dated:

## Part 2

### List of PTT Software Elements

- (i) **MDC 2000 Dispatch Console** – that dispatch console software which runs on a PC and operates as a command and control centre for the management of remote workers and provides a range of functionality including group or one-on-one communications, SOS assistance and location monitoring.
- (ii) **MT Software Development Kit (SDK) for Android** – that application programming interface set which enables access to the PTX Services on Supported Devices and enables efficient workforce management.
- (iii) **Interactive Team Organiser (ITO)** – the web-based software program which enables the Customer to create talk-groups, associate users with groups, control the permissions of individual users including their priority, their ability to originate calls, participate in private calls, transmit text messages, generate priority alerts and report location to the Customer data center.
- (iv) **IPRS Software** – the server management software which manages the Customer's server at the Customer Site (only applicable to On Premise Customers).

The PTT Software Elements will be made available as follows:-

Software element	
<b>MDC 2000 Dispatch Console</b>	
<b>MT Software Development Kit (SDK) for Android</b>	
<b>Interactive Team Organiser (ITO)</b>	
<b>IPRS Software</b>	

## Part 3

### Hardware

The hardware and devices purchased by the customer set in detail in the e-Order Form.

## Part 4

### End User Licence

#### MOBILE APP END-USER LICENCE AGREEMENT

##### END USER LICENSE AGREEMENT

###### Introduction

This is an end user licence agreement ("**Agreement**") between ( ) ("**Licensor**"), and you, the end user ("**Licensee**" or "**You**"), each a "**Party**" and together, the "**Parties**".

Please read this Agreement carefully as it governs your use of the mobile application and any updates, modifications or enhancements of it as well as proprietary software embedded in it, and any accompanying documentation ("**Documentation**") (collectively, the "**Software**").

By installing and using the Software you (1) are agreeing to be bound by and are becoming a Party to this Agreement on behalf of yourself personally or the entity or individual by whom you are employed or for whom you provide services and (2) are representing and warranting that you have adequate legal power and capacity to enter into this Agreement, are of legal age under the laws of the local or national jurisdiction from which you are accessing or using the Software and are authorized to bind the entity or individual by whom you are employed or for whom you provide services to the terms of this Agreement (if applicable).

If you do not agree with all of the terms of this Agreement or do not understand them, do not install the Software.

Notwithstanding any provision of this Agreement to the contrary, all rights, protections and privileges granted to Licensor under this Agreement shall be deemed to have been granted, in addition to Mobile Tornado Group plc and its affiliates and may be exercised by Mobile Tornado Group plc and/or its affiliates independently, at its or their sole discretion. For the avoidance of doubt, nothing in this Agreement shall be construed as imposing upon Mobile Tornado Group plc and/or its affiliates any liability or obligation of any kind.

###### Terms and Conditions

- Grant of Licence.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a limited, non-exclusive, revocable, personal, non-sub licensable and non-transferable licence to install and use the Software in object code format only on a single handheld device controlled by Licensee ("**Mobile Device**"), solely for the purpose designated by Licensor in the Documentation, subject to the terms of this Agreement and the applicable usage rules established by any third party mobile device platform or service provider or the third party from whom the Licensee is downloading the Software. Licensee acknowledges that Licensor may from time to time issue upgraded versions of the Software, and may automatically electronically upgrade the version of the Software. Licensee hereby consents to such automatic upgrading and agrees that this Agreement will apply to all such upgrades, unless accompanied by a separate or updated agreement.
- Modification, Suspension and Elimination.** From time to time and without prior notice to Licensee, Licensor may change, expand and improve the Software. Licensor may also, at any time, suspend or cease to continue operating part or all of the Software or selectively disable certain aspects of the Software. Any modification, suspension, or elimination of the Software will be done in Licensor's sole and absolute discretion and without an ongoing obligation or liability to Licensee.
- Ownership.** Except for the limited rights expressly granted herein, the licence granted under this Agreement does not transfer to Licensee or any third party any right, title or interest in any proprietary or intellectual property rights in the Software, or any copyrights, patents, or trademarks, embodied or used in connection therewith. Nothing in this Agreement shall be construed as conveying any title or ownership rights to the Licensee. The Software, in whole or in part, and all copies thereof, are and shall remain the sole and exclusive property of Licensor and its applicable affiliates, partners, suppliers, licensors, and associated mobile device platform and service providers (collectively the "**Affiliates**"). All rights not expressly granted herein are hereby reserved to Licensor and its Affiliates.

4. **Audit Rights.** Licensor, with reasonable prior notice to Licensee, shall have the right to audit Licensee's usage of the Software and Licensee's compliance with this Agreement.
5. **Certain Restrictions.** Licensee shall not use, copy or convey the Software except as specifically authorized under this Agreement. Without limiting the generality of the foregoing sentence, Licensee shall not: (a) modify, disassemble, reverse compile, reverse engineer, reproduce, create derivative works or modifications of the Software or any part thereof save to the extent that such activities cannot be excluded by applicable law; (b) provide or make available the Software or related materials in any manner, including but not limited to flow charts, logic diagrams, technical data and code, in any form, to any third person or entity; (c) sublicense, assign, transfer or otherwise convey the Software to any other person or entity; or (d) use the Software on a "service bureau" basis; (e) install, use or permit the Software to exist on more than one Mobile Device at a time or on any other mobile device or computer, other than by means of a separate download of the Software, each of which is subject to a separate licence; (f) violate any applicable laws, rules or regulations in connection with its access or use of the Software or otherwise use the Software for any illegal, unauthorized, unintended, unsafe, hazardous, or unlawful purposes, or in any manner inconsistent with this Agreement; (g) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Licensor or its Affiliates. Except for the express licence granted herein, no other licences are granted by Licensor by implication or otherwise.
6. **Copyright.** Licensee shall not remove or destroy any proprietary marking, legends, notices, or licence documents (collectively, "**Proprietary Notices**") placed upon or contained with or within the Software. Proprietary Notices may appear in any of several forms, including machine-readable form.
7. **Third Party Components.** Licensee acknowledges that the Software may contain or be accompanied by certain third party software components which may be provided subject to licences which disclaim all warranties, express or implied, including, without limitation, any open source licences ("**Third Party Components**"). Licensor and its respective third party licensors make no representations or warranties of any kind, whether express or implied (either in fact, statutory or by operation of law) with respect to such Third Party Components, including, but not limited to, merchantability, fitness for a particular purpose, title, non-infringement, misappropriation of intellectual property rights of a third party or suitability for any given purpose, all of which are expressly disclaimed to the greatest extent possible under applicable law.
8. **Certain Responsibilities of Licensee.** Licensee is responsible for ensuring that it is in compliance with the terms and conditions of this Agreement. Licensee is exclusively responsible for the installation, supervision, management, support and control of use of the Software by Licensee, its agents and employees. Licensee acknowledges and understands that the Software may require without limitation phone service, data access or text messaging capability. Licensee is responsible for any such charges, as applicable. In providing the Software, Licensor does not actively monitor the display, transmission and exchange of material that is accessible by means of the Software, nor is Licensor under any obligation to do so, except as otherwise determined by Licensor. However, Licensor reserves the right to monitor the Software and its use for the purpose of determining that their usage is in compliance with this Agreement and applicable law.
9. **Warranty Disclaimer.** The Software (including material and information accessible therewith) is provided "as is" without warranty of any kind, either express or implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Licensor disclaims, to the fullest extent permitted under law, any warranties regarding the security, availability, reliability, timeliness, accuracy and performance of the Software. Licensor makes no warranty or representation that the software will meet Licensee's requirements or work in combination with any hardware, applications or software provided by third parties or that the operation of the Software will be uninterrupted or error-free, or that any defects in the Software will be corrected.
10. **Liability**
  - 10.1 Except as expressly stated in clause 10.4, Licensor shall not in any circumstances have any liability for any losses or damages which may be suffered by Licensee (or any person claiming under or through Licensee), 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 fall within any of the following categories: (i) special damage even if Licensor was aware of the circumstances in which such special damage could arise; (ii) loss of profits; (iii) loss of anticipated savings; (iv) loss of business opportunity; (v) loss of goodwill; (vi) loss or corruption of data, provided that this clause 10.1 shall not prevent claims for loss of or damage to Licensee's tangible property that fall within the terms of clause 10.2 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 10.1.
  - 10.2 The total liability of Licensor, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to £1,500.

- 10.3 Licensee agrees that in entering into this Agreement or in relation to its use of the Software, it has not and will not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any such representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Licensor shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.
- 10.4 The exclusions and limitations set out in clauses 10.1 – 10.3 shall apply to the fullest extent permissible at law, but Licensor does not exclude liability for: (a) death or personal injury caused by the negligence of Licensor, its officers, employees, contractors or agents; (b) fraud or fraudulent misrepresentation; (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 save to the extent that the same can be lawfully excluded; or (d) any loss or corruption (whether direct or indirect) of data or information; (e) any other liability which may not be excluded by law.
- 10.5 All references to "Licensor" in this clause 10 shall, for the purposes of this clause, be treated as including all employees, officers, subcontractors and agents of Licensor and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause 10.
11. **INDEMNIFICATION.** Licensee shall indemnify and hold Licensor and, as applicable, its subsidiaries, Affiliates, officers, directors, and employees, harmless from any claim or demand, including any and all losses, liabilities, claims, demands, damages, costs or expenses, causes of action, suits, proceedings, judgments, awards, executions, and liens, including reasonable attorneys' fees and costs, whether brought by third parties or otherwise, due to or arising out of: (i) breach of any representation, warranty, covenant or obligation set forth in this Agreement; (ii) any information, content generated by Licensee's use of the Software in any form or medium including, without limitation, comments, reviews, recommendations, analysis, commands, input, settings, data, questions, answers, responses, feedback, text, symbols, designs, audio, music, sounds, compositions, artwork, images, photos, pictures, videos, animations, graphics, and URLs or other material transmitted, submitted or provided by Licensee through the Software (collectively the "**User Generated Content**"); and/or (iii) Licensee's violation of any law, or violation of the rights of a third party, including the infringement of any intellectual property or other right of any person or entity.
12. Licensor reserves the right, at its own expense, to assume the exclusive defence and control of any matter subject to indemnification by Licensee, which will not excuse Licensee's indemnity obligations under this Agreement. Licensee agrees not to settle any matter subject to the forgoing indemnification obligations without the express consent and approval of Licensor.
13. **Regulations.** Licensee shall comply fully with all applicable laws and regulations, including export restrictions and regulations, applicable to the Software.
14. **Termination.** Licensor may, in its sole and absolute discretion, at any time and for any or no reason, suspend or terminate this Agreement and the rights afforded to Licensee hereunder with or without prior notice. Furthermore, if Licensor determines in sole discretion that Licensee have violated or failed to comply with any terms and conditions of this Agreement, then this Agreement and any rights afforded to Licensee hereunder shall terminate automatically, without any notice or other action by Licensor. Upon the termination of this Agreement, Licensee shall cease all use of and uninstall the Software from its Mobile Device. Licensor reserves the right to terminate or disable all or any portion of the Software via update thereof.
15. **Effects of Termination.** All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies, or damages, choice of law and arbitration, Licensor's proprietary rights and all other provisions which by their nature are intended to survive the termination of this Agreement shall survive such termination or expiration of this Agreement for any reason whatsoever. Licensee agrees that Licensor shall not be liable for any termination of Licensee's access to the Software or the services provided thereby.
16. **Personal Data** By installing and using the software you are consenting to processing of your personal information by Licensor and Affiliates. We only use any personal data we collect through your use of the Software and the Services in the ways set out in our privacy policy, the current version of which can be viewed at [www.storm.co.uk/privacy-policy](http://www.storm.co.uk/privacy-policy). Please be aware that internet transmissions are never completely private or secure and that any message or information you send using the Software may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted..
17. **Miscellaneous.**
1. **Governing Law.** This Agreement shall be governed by English law and you agree to only bring legal proceedings in respect of it or the Software in the courts of England and Wales.
  2. **Assignment.** Licensor may sell, transfer, assign or delegate, in whole or in part, this Agreement, or any rights, duties, obligations or liabilities under this Agreement, without prior consent of Licensee. Licensee shall not sell, transfer, assign or delegate this Agreement, in whole or in part, or any rights, duties, obligations or liabilities under this Agreement, without the prior written consent of



Licensor. This Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.

3. **Amendment.** No addition or modification to this Agreement is valid unless made in writing and signed by both parties.
4. **No Waiver.** No waiver will be implied from any conduct or failure to enforce rights, nor be effective, unless in a writing signed on behalf of the party against whom the waiver is asserted.
5. **Severability.** Any part of this Agreement found to be unenforceable shall be enforced to the maximum extent permitted by law, and the remainder of this Agreement will remain in full force.
6. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to its subject matter and supersedes all prior representations, discussions and agreements (both written and oral) regarding such subject matter.
7. **Notices.** Any notices required to be given under this Agreement shall be given in writing and shall be delivered to the following address: Storm Intelligent Communications Ltd, Cardale House, Cardale Park, Harrogate, HG3 1RY. All notices under this Agreement shall be deemed effective immediately upon delivery if delivered personally, one business day after delivery if sent by facsimile with a confirmation to be sent by overnight courier, one business day after sending via a registered overnight carrier and three days after posting if mailed by registered, certified mail.
8. **Injunctive Relief.** Licensee agrees and acknowledges that any breach or threatened breach of this Agreement may cause irreparable injury to Licensor, for which monetary damages would be inadequate compensation, entitling Licensor to obtain injunctive relief, in addition to all other remedies that may be available, in law, at equity or otherwise.
18. **USAGE RULES, ADDITIONAL OBLIGATIONS/RIGHTS RELATED TO YOUR MOBILE DEVICE.** Without limitation, Licensee's use of the Software with any Apple® device, including iPhone®, iPod touch® and iPad™ mobile digital device, is subject to the usage rules established by Apple Inc., including those terms set forth in the App Store Terms and Conditions located at <http://www.apple.com/legal/itunes/ww/>, the applicable provisions of which are incorporated herein by this reference. In the event of any failure of the Software to conform to any applicable warranty, Licensee may notify Apple Inc. and Apple Inc. will refund to Licensee the purchase price for the Software, if any; and, to the maximum extent permitted by applicable law, Apple Inc. will have no other warranty obligation whatsoever to Licensee with respect to the Software. Apple Inc. is not liable for any claims by Licensee or any third party relating to the Software, or Licensee's possession or your use of the Software, including, but not limited to, (i) any product liability claims; (ii) any claim that the Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Licensee also acknowledges that this Agreement is, concluded between Licensee and Licensor, and not with Apple.
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21. **THIRD PARTY SOFTWARE NOTICES.** Portions of the Software may be provided with notices and open source licences from such communities and third parties that govern the use of those portions, and any licences granted pursuant to this Agreement do not alter any rights and obligations Licensee may have under such open source licences. The disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all elements of the Software.
22. iPhone, iPod touch and iPad are trademarks of Apple Inc.
23. BlackBerry®, World™ and related trademarks, names and logos are the property of BlackBerry, and are registered and/or used in the U.S. and countries around the world, and used under license from BlackBerry.
24. Google and Android™ are trademarks of Google, Inc.
25. All other brand and product names are or may be trademarks of, and are used to identify products or services of, their respective owners.

## Part 5

### Performance Specification

Storm will make available to the Customer a Helpdesk service where the Customer may contact Storm during Business Days in English language in order to report problems related to the operation of the PTX Service.

After Hours support will be limited to Critical and Major problems.

Storm shall use reasonable endeavours to comply with the response times (i.e. the interval from the time the problem is reported until the Helpdesk responds to the Customer and until the Storm's engineers begin to analyse the problem) as listed in the table below:

<b>Problem Severity</b>	<b>Response time to the Customer no longer than:</b>	<b>Problem analysis starts no longer than:</b>	<b>Appropriate Communication method with Helpdesk</b>
Critical complete unavailability of the PTX Service	15 minutes	25 minutes	Phone
Major (major function is experiencing a reproducible error which causes major inconvenience and disturbance to the PTX Service)	30 minutes	1 hour	Phone
Minor (non-Critical or non-Major problem)	1 Business Day	2 Business Days	e-mail

Storm will not be obliged to resolve any problem that cannot be successfully simulated by Storm in accordance with the information provided by the Customer.



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