

# East Midland Central Station Ltd (“EMCS”) Application for Credit Account



<b>1.</b>	Trading name:	
	Registered name: (if company or limited liability partnership):	
	Registered number: (if company or limited liability partnership):	
	Type of business: (company, limited liability partnership, partnership, sole trader etc):	

<b>2.</b>	Trading address:	
	Invoice address:	Registered office: (if company or limited liability partnership):

<b>3.</b>	Telephone number:	Fax number:
	Email address:	URL (website):
	VAT/TVA number (this must be completed):	

<b>4.</b>	Full List of Directors (if a company) / Full list of Partners (if a partnership) / Full List of Employees with Authority to Contract on Behalf of the Business (if a Sole Trader):		
	Home Addresses and Telephone Numbers for all Persons Named Above:		

If insufficient space, please complete on a separate sheet.

<b>5.</b>	Nature of business:	Credit limit required:
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<b>6.</b>	Number of years in business:	
	Number of employees- full time:	Part time:
	Annual sales volume:	
	Do you own <input type="checkbox"/> rent <input type="checkbox"/> or lease <input type="checkbox"/> your business location? (please select correct option)	

# East Midland Central Station Ltd

## Terms And Conditions For The Provision Of Monitoring Services



7.	Name of Bank:	Payment type (we accept credit cards, BACs and/or cheques):	
	Address of Bank:		
	Clearing Number:	Account Number:	Sort Code:

8.	Monitoring Services:	<input type="checkbox"/> Alarm Monitoring Services
		<input type="checkbox"/> Lone Worker Monitoring Services
		<input type="checkbox"/> Message Handling Services
		<input type="checkbox"/> VSS Monitoring Services

9.	Charges: As set out in accompanying documents (Charges + VAT)
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10.	Contact details of the person/ team responsible for paying the account (i.e. accounts team or designated individual):	
	Name:	Telephone Number:
	Job title:	E-mail address:

11.	Name and Address of two Trade Referees	
	1.	2.

12.	To be Completed by EMCS		
	Account Number:	Installer Number:	Credit Limit:
	Start Date:	Payment Terms:	Keyed by:
	Account Manager Name:	Account Manager Number:	Comments:

13.	Initial Term [       ] Months from Start Date	Start Date:	Credit Limit Required:
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(only complete where Initial Term is not 12 months from the date the Credit Account Application Form is accepted by EMCS)

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### Credit Information

We will make a search with a credit reference agency and we will keep a record of that search for as long as an account is open and trading with EMCS. We may also make enquiries about directors, partners or sole traders with a credit reference agency.

Additionally we will monitor and record information relating to your trade performance and your trade credit performance. We may share that information with other businesses in assessing applications for credit and for fraud prevention.

I/we acknowledge receipt of, and I/we confirm that I/we have read, understood and accept the Terms and Conditions for the Provision of Monitoring Services attached to this Credit Account Application Form ("the Terms"); and the Alarm Monitoring Policy, the Alarm Monitoring Schedule, the VSS Monitoring Services Schedule, Message Handling Services Schedule and Lone Worker Monitoring Services Schedule referred to in the Terms (to the extent they apply).

I understand that when EMCS accepts this completed credit account application (as per clause 1.4 of the Terms) a binding agreement shall be formed.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_ Name: \_\_\_\_\_ [BLOCK CAPITALS]

Select where appropriate: If signing on behalf of a [Company/ Partnership/ Sole Trader]  
State full legal name and where applicable company registration number:

Print name of signee: \_\_\_\_\_ Trading name (if different from legal name): \_\_\_\_\_

Position Held: \_\_\_\_\_

### 1. INTERPRETATION AND FORMATION OF AGREEMENT

1.1 In these terms and conditions ("Terms"), unless the context otherwise requires, the following words shall have the following meanings:  
"Alarm Monitoring Services" the alarm monitoring services provided by EMCS (where these have been purchased by the Customer) in accordance with the Alarm Monitoring Services Schedule;

"Alarm Monitoring Services Schedule" the Alarm Monitoring Services schedule issued by EMCS from time to time, the current version of which is supplied to the Customer with these Terms (the receipt of which the Customer acknowledges);

"Alarm Monitoring Policy" EMCS' Alarm Monitoring Policy as issued by EMCS from time to time, the current version of which is supplied to the Customer with these Terms (the receipt of which the Customer acknowledges);

"Agreement" the agreement consisting of the Credit Account Application Form and these Terms formed as set out in clause 1.4;

"Applicable Law" all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

"Appropriate Authority" the public body, authority, organisation or other entity responsible for regulating and/or responding to Signalled Alarm Conditions;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and the expression 'change of control' shall be construed accordingly;

"Charges" the amounts to be charged to, and paid by, the Customer as set out in EMCS' standard scale of charges from time to time in force as these are notified to the Customer in writing from time to time; or such charges as are otherwise agreed by the parties;

"Communication Centre" any of EMCS' centres operating a signal monitoring system at which EMCS receives signals and provides the Monitoring Services;

"Credit Account Application Form" the credit account application form submitted by the Customer which is attached to, and incorporates, these Terms;

"Customer" the person, firm or company with whom EMCS contracts for the provision of the Monitoring Services on the terms set out in the Agreement;

"Customer Equipment" all equipment belonging to or used by the Customer to which the Transmitter Unit is connected and the Transmitter Unit itself;

"Customer SmarTest" EMCS' app for mobile devices known as "Customer SmarTest" available for use by Customers and End Users to access EMCS' online user portal;

"Data Protection Legislation" United Kingdom General Data Protection Regulation (the UK GDPR), Data Protection Act 2018 and all other subsequent data protection legislation and regulation as the same shall apply within the United Kingdom and so far as the same is, or shall be,

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incorporated into data protection legislation within the United Kingdom and such other data protection legislation that is in force from time to time;

“EMCS” East Midlands Central Station Ltd (company number 02141723) whose registered office is at Waterside House, Tissington Close, Chilwell, Nottingham, NG9 6QG;

“EMCS Request For Central Station Connection Form” the request by the Customer for the supply of Monitoring Services;

“End User” any client of the Customer (if any) in respect of whom EMCS agrees to provide Monitoring Services;

“End User Equipment” any alarm system, communication device or connected equipment installed at the Premises;

“Engineer SmarTest” EMCS’ app for mobile devices known as “Engineer SmarTest” available for use by the Customer’s engineers to access EMCS’ online service portal;

“Higher Priority Alarms” Signalled Alarm Conditions that are not Lower Priority Alarms;

“Initial Term” the period identified as such in the Credit Account Application Form, if any, and if none the period of 12 calendar months from the date the Credit Account Application Form is accepted by EMCS pursuant to clause 1.4;

“Lone Worker Monitoring Equipment” the equipment loaned by EMCS for the purposes of using the Lone Worker Monitoring Services;

“Lone Worker Monitoring Services” the lone worker monitoring services provided by EMCS (where these have been purchased by the Customer) in accordance with the Lone Worker Monitoring Services Schedule;

“Lone Worker Monitoring Services Schedule” the Lone Worker Monitoring Services schedule issued by EMCS from time to time, the current version of which is supplied to the Customer with these Terms (the receipt of which the Customer acknowledges);

“Lone Worker Monitoring Software” the app for lone workers available for use by the Customer and its staff;

“Lower Priority Alarms” Signalled Alarm Conditions that include, but not limited to: alternating current power fail, battery fail, BT link down, BT link OK, fault alarms, mains failure, low battery, low radio-frequency battery, panel fault, power loss, public switched telephone network low voltage and system trouble;

“Message Handling Services” the out of hours telephone answering services provided by EMCS (where these have been purchased by the Customer) in accordance with the Message Handling Services Schedule;

“Message Handling Services Schedule” the Message Handling Services schedule issued by EMCS from time to time, the current version of which is supplied to the Customer with these Terms (the receipt of which the Customer acknowledges);

“Monitoring Services” the Alarm Monitoring Services, VSS Monitoring Services, Message Monitoring Services or Lone Worker Monitoring Services, or any of them, as indicated on the Credit Account Application Form;

“NetPORT” the EMCS online portal which can be accessed remotely by the Customer and/or End Users as agreed by EMCS from time to time;

“Premises” the premises at which the Transmitter Unit is installed as set out in the EMCS Request For Central Station Connection Form;

“Signalled Alarm Conditions” any signal transmitted from a Transmitter Unit indicating that there has been an alarm activation at the Customer’s and/or End User’s premises, including but not limited to signals from intruder, security, fire, environmental, medical and plant alarms and close circuit television systems;

“Signalling Path” the communications link between each Transmitter Unit and the Communication Centre;

“Signalling Path Service Provider” the provider of the Signalling Path; and

“Transmitter Unit” a device or devices connected to the Customer Equipment which transmits signals to the Communication Centre.

“VSS Monitoring Services” the VSS monitoring services provided by EMCS (where these have been purchased by the Customer) in accordance with the VSS Monitoring Services Schedule;

“VSS Monitoring Services Schedule” the VSS Monitoring Services schedule issued by EMCS from time to time, the current version of which is supplied to the Customer with these Terms (the receipt of which the Customer acknowledges);

“VSS System” any VSS system installed at the Premises;

1.2 In these Terms unless the context requires otherwise:

1.2.1 works importing the singular number include the plural and vice versa;

1.2.2 works importing any particular gender shall include all other genders;

1.2.3 reference to persons shall include bodies of persons whether corporate or incorporate;

1.2.4 words importing the whole are treated as including a reference to any part of the whole;

1.2.5 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.6 any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;

1.2.7 any reference in these Terms to an industrial standard shall be construed as a reference to that standard as amended or replaced at the relevant time;

1.2.8 the headings in these Terms are for convenience only and shall not affect its interpretation; and

1.2.9 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal

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doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

1.3 In these Terms all references to "in writing" shall be deemed to include communications made in writing, by fax, by email or by any other electronic or computer based transmission and by such other form of communication as may be approved by EMCS from time to time.

1.4 The Agreement between EMCS and the Customer shall consist of the Application for Credit Account and these Terms. However, a legally binding contract shall not come into effect until EMCS has sent the Customer a written acceptance of its Application for Credit Account and the EMCS Request For Central Station Connection Form.

### 2. MONITORING SERVICES TO BE PROVIDED BY EMCS

2.1 Subject to the Customer complying with its obligations under the Agreement, EMCS shall use its reasonable endeavours to supply the Monitoring Services during the continuance of the Agreement in accordance with the Alarm Monitoring Policy (as applicable to the Monitoring Services concerned).

2.2 EMCS warrants that it shall provide the Monitoring Services using reasonable skill and care and the Monitoring Services shall conform in all material respects to any description supplied by EMCS for such service. As the Customer's sole and exclusive remedy, EMCS shall, at its option, remedy, re-perform or refund the Monitoring Services that do not comply with this clause 2.2

2.3 Except as expressly set out in these Terms all other warranties, representations or conditions which would otherwise be implied at or by common law, statute, trade usage or otherwise are hereby expressly excluded to the extent permitted by law.

2.4 All Signalled Alarm Conditions shall be classified by EMCS (at its sole discretion, and whose decision regarding classification shall be final) as either Higher Priority Alarms or Lower Priority Alarms. Unless otherwise requested by the Customer in writing all Lower Priority Alarms shall be notified to the Customer by either SMS text notifications or email notifications (as determined by EMCS at its sole discretion).

### 3. CUSTOMER OBLIGATIONS

3.1 The Customer shall at all times during the continuance of the Agreement:

3.1.1 give to EMCS in writing full, accurate and complete details of: all (and as an absolute minimum two) keyholders to the Customer Equipment or End User Equipment (as appropriate); and immediately notify EMCS of any changes;

3.1.2 ensure that it and any End User: conforms and complies to the requirements of the Appropriate Authority as set out in the Alarm Monitoring Policy, along with any Applicable Laws; and maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its or their obligations under or in connection with the Agreement;

3.1.3 give to EMCS in writing full, accurate and complete details of any special instructions or other information that may be relevant or necessary for EMCS to have notice of for the performance of the Monitoring Services;

3.1.4 as soon as practically possible notify EMCS in writing of any police unique reference number(s), where police attendance is required in response to a Signaled Alarm Condition and if the police unique reference is withdrawn or the police response is downgraded the Customer shall notify both EMCS and any End User in writing of such change and the current status of the police response;

3.1.5 where the Customer has an End User, all reasonably necessary contact details as required under this Agreement relating to the End User:

3.1.5.1 as soon as practically possible inform EMCS in writing of any changes to the End User's details, whether of a permanent nature or otherwise;

3.1.5.2 comply with its obligations under the Data Protection Act 2018 and other relevant data protection legislation; and

3.1.5.3 check the accuracy and completeness of any End User's details as held by EMCS and made available by EMCS to the Customer from time to time and inform EMCS promptly in writing of any errors or inaccuracies in respect of the same;

3.1.6 inform EMCS by telephone or in writing prior to the testing of or carrying out of any maintenance on any End User Equipment or Customer Equipment;

3.1.7 provide EMCS in writing with an up to date contact list for the Customer and inform EMCS in writing from time to time of all and any changes thereto;

3.1.8 indemnify EMCS on demand from and against, and keep EMCS indemnified on demand from and against all and any charges that may be made from time to time by an Appropriate Authority in respect of any false alarms or call outs at the Premises;

3.1.9 instruct all End Users in the use of the End User Equipment and the Customer Equipment to ensure that false alarms transmitted to EMCS are kept to a minimum;

3.1.10 if, in the absolute opinion of EMCS, acting reasonably, Signalled Alarm Conditions from an End User becomes excessive, rectify the problem within 7 days of being notified to do so by EMCS. If the problem cannot be rectified the Customer shall at the request of EMCS, remove the signalling service to EMCS from the Premises;

3.1.11 ensure that all End User Equipment and Customer Equipment is installed and/or maintained in accordance with the appropriate

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British Standards, industrial standards or other quality standards so as to minimise the Signalling Alarm Conditions and false call outs;

- 3.1.12 comply with all requirements and obligations placed upon the Customer under the Alarm Monitoring Services Schedule (to the extent the Alarm Monitoring Services are being supplied by EMCS);
  - 3.1.13 comply with all requirements and obligations placed upon the Customer under the Message Handling Service Schedule (to the extent the Message Handling Services are being supplied by EMCS);
  - 3.1.14 comply with all requirements and obligations placed upon the Customer under the VSS Monitoring Services Schedule (to the extent the VSS Monitoring Services are being supplied by EMCS); and
  - 3.1.15 comply with all requirements and obligations placed upon the Customer under the Lone Worker Monitoring Services Schedule (to the extent the Lone Worker Monitoring Services are being supplied by EMCS).
- 3.2 The Customer shall not, and shall procure that the End User shall not, add to or modify the VSS System without obtaining the prior written consent of EMCS.

#### 4 NetPORT

- 4.1 Subject to clause 4.2, in consideration of the payment of the Charges by the Customer, EMCS grants to the Customer and/or End User a non-exclusive, non-transferable, non-sublicensable licence to use NetPORT for the duration of the Agreement on the terms set out in the Agreement or as otherwise prescribed by EMCS from time to time.
- 4.2 In order to access NetPORT, the Customer and/or End User must first apply in writing to EMCS, typically via email, for a user name and password. EMCS shall process the request and (if approved) supply passwords and a user name to enable the Customer and/or End User to access NetPORT within 10 days.
- 4.3 EMCS will provide training to the Customer and/or End User on the use and operation of NetPORT on any dates agreed by EMCS - but time for such performance shall not be of the essence of this Agreement. Training on the use of NetPORT may be performed via video link (such as Zoom or Microsoft Teams), at EMCS's premises and/or at the Customer's and/or End User's premises. Where applicable, the Customer and/or End User must provide a suitable training environment.
- 4.4 Daily data reports showing any changes the Customer and/or End User makes using NetPORT will be available through NetPORT. It is the Customer's and/or End User's responsibility to ensure that its data on NetPORT is correct and up to date. EMCS has no liability to verify the accuracy of data entered by the Customer and/or End User nor has it any obligation to provide the Customer and/or End User with any other data reports.
- 4.5 EMCS shall have no liability in respect of the Customer's or End User's use or misuse of NetPort (including, for the avoidance of doubt, errors or mistakes in using NetPort).
- 4.6 EMCS shall use its reasonable endeavours to make NetPORT available 24 hours a day. However, EMCS does not warrant that NetPORT will be available uninterrupted or error free. Accordingly, EMCS shall not be liable if for any reason NetPORT is unavailable at any time or for any period. Access to NetPORT may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for any other reason.
- 4.7 EMCS does not warrant that NetPORT or the Monitoring Services will be free from viruses nor that NetPORT will be interoperable with any particular hardware or software.

#### 5 SMARTEST

- 5.1 The Customer and/or an End User may at any time apply to EMCS to use Customer SmarTest and Engineer SmarTest. In order to access Customer SmarTest or Engineer SmarTest, the Customer and/or End User must first apply in writing to EMCS, typically via email, for a user name and password. EMCS shall process the request and (if approved) supply passwords and a user name to enable the Customer and/or End User to access Customer SmarTest and/or Engineer SmarTest within 10 days. Any such access shall be strictly subject to any end-user licence agreement or other terms prescribed by EMCS from time to time.
- 5.2 EMCS shall have no liability in respect of the Customer's or End User's use or misuse of Customer SmarTest or Engineer SmarTest (including, for the avoidance of doubt, errors or mistakes in using Customer SmarTest or Engineer SmarTest).
- 5.3 EMCS does not warrant that Customer SmarTest or Engineer SmarTest will be available uninterrupted or error free. Accordingly, EMCS shall not be liable if for any reason either are unavailable at any time or for any period. Access to Customer SmarTest or Engineer SmarTest may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for any other reason.
- 5.4 EMCS does not warrant that Customer SmarTest or Engineer SmarTest will be free from viruses.

#### 6 LONE WORKER MONITORING SERVICES

- 6.1 To access the Lone Worker Monitoring Services, the Customer must for each member of staff wanting to use such services either:
  - 6.1.1 use lone worker monitoring equipment loaned from EMCS, in which case the additional terms in clauses 6.2, 6.3 and 6.4 shall apply; or

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- 6.1.2 use the Lone Worker Monitoring Software on its own compatible devices, in which case the additional terms in clauses 6.5 to 6.10 (inclusive) shall apply.
- 6.2 If the Customer uses Lone Worker Monitoring Equipment loaned from EMCS, then the Customer shall:
- 6.2.1 provide EMCS with all the assistance it requires to deliver the Lone Worker Monitoring Equipment;
- 6.2.2 operate and use the Lone Worker Monitoring Equipment only for the purposes of using the Lone Worker Monitoring Services;
- 6.2.3 not modify the Lone Worker Monitoring Equipment;
- 6.2.4 not create, or allow to be created over the Lone Worker Monitoring Equipment any lien, charge or other security;
- 6.2.5 not lend, lease, sell or otherwise part with possession of the Lone Worker Monitoring Equipment or represent it may do any of those things;
- 6.2.6 ensure that the Lone Worker Monitoring Equipment is clearly identifiable as belonging to EMCS; and
- 6.2.7 not remove or alter any identifying mark on the Lone Worker Monitoring Equipment.
- 6.3 Risk in the Lone Worker Monitoring Equipment shall pass to the Customer on delivery. Accordingly, the Customer shall be responsible for insuring the Lone Worker Monitoring Equipment for their full replacement value against all risks.
- 6.4 If the Customer uses Lone Worker Monitoring Equipment loaned from EMCS, then EMCS shall:
- 6.4.1 deliver the Lone Worker Monitoring Equipment, but time for delivery shall not be of the essence; and
- 6.4.2 at all times retain ownership of the Lone Worker Monitoring Equipment and the Customer shall not do or allow to occur anything which might adversely affect the right, title or interest of EMCS in the Lone Worker Monitoring Equipment.
- 6.5 Subject to clauses 6.6 to 6.10 (inclusive), in consideration of the payment of the Charges by the Customer, EMCS grants to the Customer and/or End User a non-exclusive, revocable, non-transferable, non-sublicensable and personal licence to use the Lone Worker Monitoring Software for the duration of the Lone Worker Monitoring Services on the terms set out in the Agreement or as otherwise prescribed by EMCS or the owner of the intellectual property rights in the Lone Worker Monitoring Software from time to time. Any conflict between the terms set out in the Agreement or otherwise prescribed by EMCS and any end-user licence agreement prescribed by the owner of the intellectual property rights in the Lone Worker Monitoring Software from time to time ("EULA") shall be resolved in favour of the EULA.
- 6.6 In order to access the Lone Worker Monitoring Software, the Customer and/or End User must first apply in writing to EMCS, typically via email, for a user name and password and then download the app from an app store. EMCS shall process the request and (if approved) supply passwords and a user name to enable the Customer and/or End User to access the Lone Worker Monitoring Software within 10 days.
- 6.7 EMCS will (at its sole discretion) provide training to the Customer and/or End User on the use and operation of Lone Worker Monitoring Software on any dates agreed by EMCS - but time for such performance shall not be of the essence of this Agreement. Training on the use of Lone Worker Monitoring Software may be performed via video link (such as Zoom or Microsoft Teams), at EMCS's premises and/or at the Customer's and/or End User's premises. Where applicable, the Customer and/or End User must provide a suitable training environment.
- 6.8 EMCS shall have no liability in respect of the Customer's or End User's use or misuse of Lone Worker Monitoring Software (including, for the avoidance of doubt, errors or mistakes in using Lone Worker Monitoring Software).
- 6.9 EMCS shall use its reasonable endeavours to make the Lone Worker Monitoring Software available for 99% of the time in each calendar month (excluding downtime for scheduled maintenance, emergency maintenance and force majeure (see clause 15)). However, EMCS does not warrant that the Lone Worker Monitoring Software will be available uninterrupted or error free. Accordingly, EMCS shall not be liable if for any reason the Lone Worker Monitoring Software is unavailable at any time or for any period. Access to the Lone Worker Monitoring Software may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for any other reason.
- 6.10 EMCS does not warrant that the Lone Worker Monitoring Software will be free from viruses nor that the Lone Worker Monitoring Software will be interoperable with any particular hardware or software.

## 7 CHARGES

- 7.1 Unless otherwise agreed in writing the Charges for the whole of the Initial Term shall be due and payable by the Customer (without any deduction withholding or set-off whatsoever) within 30 days of the earliest of: (i) activation of the Signalling Path; (ii) as applicable, connection by EMCS to the End User Equipment and/or Customer Equipment; or (iii) the commencement of the Monitoring Services. Upon expiry of the Initial Term and each yearly anniversary of the last day of the Initial Term, the Charges shall be payable in advance and billed against the credit or debit card held on the Customer's account (if any) or otherwise invoiced to the Customer. Where the Customer has a credit or debit card or debit card registered against its account, it hereby expressly gives EMCS the authority to charge such credit or debit card will all amounts due to EMCS. The time of payment of Charges shall be of the essence of the Agreement.
- 7.2 If the Customer fails to make payment in full and cleared funds on the due date for payment, EMCS shall be entitled to upon 7 days' notice in writing to the Customer to suspend the Agreement and/or reduce the level of the Monitoring Services under the

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- 7.3 Agreement. For the avoidance of doubt EMCS will still respond to Signalled Alarm Conditions. If the Customer fails to make payment under clause 7.2 EMCS reserves the right to immediately terminate the Agreement or suspend all Monitoring Services (or part thereof) upon notice to the Customer. In such circumstances EMCS reserves the right to contact End-Users directly to notify them of such termination or suspension - and the Customer expressly consents to EMCS going so.
- 7.4 Following the expiration of the Initial Term, EMCS may increase or decrease all or any of Charges or introduce new charges by notifying the Customer of any such variation or the introduction of a new charge in writing, any such increase, decrease or new charge to be effective from 30 days after the date of notification.
- 7.5 Should the tariffs charged by the Signalling Path Service Provider in respect of their connection charge, call rates or leased lines (provider circuits) be increased then EMCS reserves the right to increase charges to the Customer with immediate effect by such amount as may be necessary to reimburse EMCS for any increased or additional costs incurred by EMCS in providing the Monitoring Services.
- 7.6 All sums payable under the Agreement by the Customer, unless otherwise stated, are exclusive of Value Added Tax ("VAT") and any other sales tax or duty, and any VAT payable shall be payable by the Customer to EMCS in addition to the Charges.
- 7.7 EMCS hereby reserves the right to refuse to reconnect any Monitoring Services or renew any contracts if the Customer's account is in arrears.
- 7.8 If the Customer fails to make any payment on the due date then EMCS shall be entitled to: (a) charge the Customer interest (both before and after any judgement) on the amount unpaid on a daily basis at a rate of 8 per cent per annum above the Bank of England base rate from time to time until payment in full and cleared funds is made; and (b) any costs of recovery incurred by EMCS.

## 8 TERM AND TERMINATION

- 8.1 EMCS agrees to provide Monitoring Services under the Agreement in respect of the Customer and/or the End User(s) (as applicable) for the Initial Term. Thereafter the Agreement shall continue in respect of the Customer and/or End User(s) (as applicable) until the expiration of not less than 30 days prior notice in writing from one party to the other.
- 8.2 EMCS may terminate the Agreement, and any other agreement with the Customer, immediately by giving notice in writing to the Customer in one or more of the following events:
- 8.2.1 if the Customer fails to pay the Charges by the due date for payment and such amounts remain unpaid for 7 days after their due date for payment;
- 8.2.2 if the Customer fails to comply with any of its obligations under this Agreement;
- 8.2.3 if the Customer undergoes a change of Control or if it is realistically anticipated that the Customer will undergo a change of Control within two months;
- 8.2.4 if the Customer stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 8.2.5 if: the Customer shall convene a meeting of its creditors; a proposal shall be made for a company voluntary arrangement under Insolvency Act 1986 in respect of the Customer; the Customer becomes subject to a moratorium under Part A1 of the Insolvency Act 1986 or becomes subject to a restructuring plan under Part 26A of the Companies Act 2006; the Customer is subject to a proposal for any other composition scheme or arrangement with (or assignment for the behalf of) its creditors; the Customer is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if EMCS reasonably believes that to be the case; the Customer becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006; a trustee, receiver, manager, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the Customer's business or assets or if a petition is presented or a meeting is convened for the purposes of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or any winding-up or administration order; or the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business or is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced or has a freezing order made against it; or
- 8.2.6 if any third party takes or threatens any action including (but without limitation) the commencement of legal proceedings to enforce or foreclose on any lien or mortgage over or in respect of any property of the Customer or to forfeit any estate or interest of the Customer in any property or enters or seeks to enter into possession thereof.
- 8.3 EMCS relies upon the Customer for the accuracy of the information it receives concerning the Customer, End Users and the Premises. Accordingly, EMCS may terminate the Agreement immediately by giving notice in writing to the Customer: if the Customer or any officer, director or employee of the Customer gives EMCS any inaccurate, false or misleading information, whether concerning the Customer, End User, Premises or otherwise; or in the event of any misrepresentation in connection with obtaining the Agreement or at any time during the continuance of the Agreement.



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### 9 CONSEQUENCES OF TERMINATION

- 9.1 Upon the termination or expiration of the Agreement for any reason, the Customer shall:
- 9.1.1 immediately pay to EMCS the full amount of all monies then or thereafter due to EMCS together with, if demanded by EMCS, any interest due up until the date of payment in full and cleared funds; and
- 9.1.2 in respect of any End User(s), immediately inform the End User(s) in writing that the Monitoring Services under the Agreement have ceased to operate immediately.
- 9.2 The expiration or termination of the Agreement for any reason shall be without prejudice to any accrued rights or liabilities of the parties and any provisions of these Terms which relate to or govern the acts of the parties subsequent to such expiry or termination - which shall remain in full force and effect and shall be enforceable notwithstanding such expiry or termination.

### 10 INDEMNITY

- 10.1 The Customer shall indemnify EMCS on demand against, and keep EMCS indemnified on demand against, any losses, damages, liability, costs (including legal fees) expenses and claims incurred or suffered by EMCS as a consequence of a breach or alleged breach by the Customer of the terms of the Agreement or as a result of the Customer's negligence.
- 10.2 The Customer is responsible for regulating and controlling its contractual relationship with End Users. Therefore, the Customer shall indemnify on demand, and keep indemnified on demand, EMCS from and against any losses, damages, liability, costs (including legal fees), expenses and claims incurred or suffered (including claims for loss by reason of death or personal injury) by EMCS as a result of or in connection with any claims made by any End User or any third party against EMCS or its servants or agents where the claim arises out of any act or omission on the part of EMCS in connection with the performance of the Monitoring Services.
- 10.3 EMCS shall only process personal data received by it from the Customer and/or the End User in accordance with the performance of its obligation under the Agreement, as required by the Customer and/or to contact the End User to notify it of the termination of the Agreement. Accordingly the Customer agrees to indemnify EMCS in respect of any breach of data in line with the data protection procedures as stated in clause 17 occasioned by the processing of personal data by EMCS in accordance with the provisions of this cause.

### 11. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISION OF THIS CLAUSE 11.

- 11.1 The following provisions set out EMCS' entire liability (including any liability for the acts and omissions of its employees) to the Customer in respect of:
- 11.1.1 any breach of its contractual obligations arising under the Agreement; and
- 11.1.2 any representation, statement or tortious act or omission (including negligence) or any other form of liability arising under or in connection with the Agreement.
- 11.2 Any act or omission on the part of EMCS falling within clause 11.1 above shall for the purposes of this clause 11 be known as an "Event of Default".
- 11.3 EMCS' liability to the Customer for fraud or fraudulent misrepresentation, any other losses which cannot be excluded or limited by Applicable Law, death or personal injury resulting from its own or that its employees' negligence shall not be limited.
- 11.4 Subject to clauses 11.3 and 11.5, and subject always to the provisions of the Unfair Contract Terms Act 1977, the Customer hereby agrees and acknowledges that the aggregate liability of EMCS to the Customer for all Events of Default under the Agreement shall not exceed the lower amount of the following:
- 11.4.1 the actual amount of loss or damage suffered by the Customer; or
- 11.4.2 the sum of £750,000.00 (seven hundred and fifty thousand pounds).
- 11.5 Subject to clause 11.3, EMCS shall not be liable to the Customer in respect of:
- 11.5.1 any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or EMCS had been advised of the possibility of the Customer incurring the same;
- 11.5.2 any loss caused by any failure of, or failure or issue in the operation of, any End User Equipment or Customer Equipment or by any failure or want of care in, or other issue with, any End User Equipment or Customer Equipment or work to or maintenance of any End User Equipment or Customer Equipment whether performed at or about the Premises or elsewhere;
- 11.5.3 any losses, damages, costs, claims or expenses which may arise from any act or omission or default of the Customer for whatsoever reason and including but not limited to a breach of any provision of the Agreement;
- 11.5.4 any claim made against the Customer by any other party or person (including the End User);
- 11.5.5 any losses, damages, costs, claims or expenses which may arise from the failure of any system or signal path operated or provided by the Signalling Path Service Provider; or
- 11.5.6 any loss of profit, loss or corruption of data, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings, discount or rebate (whether actual or anticipated) or harm to reputation or loss of goodwill (in each case whether direct or indirect).

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- 11.6 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Agreement.
- 11.7 The Customer agrees to provide EMCS with a written notice to remedy any Event of Default which is capable of remedy and afford EMCS 21 days in which to remedy the Event of Default.
- 11.8 Subject to clause 11.3, EMCS shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon EMCS within 2 months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 11.9 Nothing in this clause 11 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 11.10 The Customer agrees and acknowledges that the limitations of liability set out in this clause 11 are fair and reasonable having regard to the facts that:
- 11.10.1 the potential losses which could or might be caused as a result of any breach of the terms of the Agreement are greatly in excess of wholly disproportionate to the amount being charged by EMCS for the provision of the Monitoring Services hereunder;
- 11.10.2 EMCS has no knowledge as to the value of any of the Customer's or End User's property;
- 11.10.3 EMCS has no control over nor responsibility for the installation, maintenance or loaning of any End User Equipment or Customer Equipment at the Premises;
- 11.10.4 EMCS was not obliged to examine, enquire into or inspect any End User Equipment or Customer Equipment or to inspect the relevance, accuracy or any other aspect of such equipment; and
- 11.10.5 insurance is readily available to the Customer and End User against the potential damages, losses, costs and expenses which could or might be suffered or incurred by the Customer or End User as a result of any breach of the terms of the Agreement or otherwise, and **the Customer is specifically advised to effect and maintain such insurance - and to recommend that its End User effect and maintain such insurance too.**
- 12 ENFORCEMENT OF LIMITATIONS**
- 12.1 Where the Customer has an End User, the Customer shall:
- 12.1.1 indemnify EMCS, its servants and agents (the "Indemnified Parties") on demand against all losses, damages, costs, claims and expenses incurred or suffered by the Indemnified Parties arising out of any action brought against Indemnified Parties by an End User up to the level of limitation of liability set out in clause 11; and
- 12.1.2 disclose to all End Users the terms of clause 11 and, in particular, the fact that the provision of the Monitoring Services does not obviate the need for the End User to effect and maintain insurance in respect of the Premises and its contents and any business carried out thereon against the potential damages, losses, costs and expenses which could or might be suffered or incurred by the End User as a result of any breach of the terms of the Agreement or otherwise.
- 12.2 The Customer hereby acknowledges and admits that the effective operation and condition of the End User Equipment, the Customer Equipment and the Signalling Paths serving the Premises and connection to the Signalling Paths is the absolute liability of the Customer and hereby agrees that EMCS shall not incur any liability due to any fault, defect or malfunction thereof.
- 12.3 The Customer hereby acknowledges and admits that it is solely responsible for the installation, commissioning and maintenance of the End User Equipment and the Customer Equipment at the Premises.
- 12.4 The Customer agrees with EMCS that by virtue of the Contracts (Rights of Third Parties) Act 1999 the employees and agents of EMCS shall be entitled to the protection of all the terms and conditions hereof which expressly confer such protection on them in any claim by the Customer against such employees or agents.
- 13 APPROPRIATE AUTHORITIES**
- 13.1 The Customer hereby acknowledges that EMCS' obligations to receive and transmit signals is subject to any limitations and conditions imposed from time to time by an Appropriate Authority and by the relevant Signalling Path Service Provider.
- 13.2 The Customer hereby acknowledges that certain Appropriate Authorities may from time to time impose charges (which may be increased by the Appropriate Authorities from time to time) on EMCS in respect of alarm signals notified to such Appropriate Authorities. The Customer agrees that any such charges shall be for the account of the Customer, and the Customer accordingly agrees either to pay such charges direct on the applicable payment terms, or to fully reimburse EMCS immediately upon demand by EMCS in respect of all such charges where the same are paid direct by EMCS. Where reasonably possible, EMCS will use its reasonable endeavours to notify the Customer in advance of any such charges by Appropriate Authorities.
- 13.3 The Customer shall notify EMCS immediately in writing upon the Customer being made aware of any conditions, limitations or restrictions which may be imposed by the Appropriate Authority which may affect the provision of the Monitoring Services.
- 14 VARIATION**
- 14.1 The Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.

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### 15 FORCE MAJEURE

- 15.1 EMCS shall not be liable for any failure or delay in the performance of any of its obligations hereunder where such performance is delayed or affected by any contingency beyond the reasonable control of EMCS including, but not limited to, act of God, fire, flood, lightning, earthquake or other natural disaster, epidemic, pandemic, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Agreement, strike, lockout or boycott or other industrial action including those involving the EMCS's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay ("Force Majeure").
- 15.2 Where possible, for any reasonably foreseeable, abnormal occurrences (hazards) that may affect the continuity and security of the Communication Centre EMCS will use its reasonable endeavours to mitigate such event through the use of a contingency plan.
- 15.3 If the Force Majeure event continues for a continuous period of more than 28 days, either party may terminate the Agreement by written notice to the other party.

### 16 GENERAL

- 16.1 The Agreement and all the rights under it shall be personal to the Customer and the Customer shall not assign, transfer, sub-contract or in any manner make over or purport to assign, transfer or sub-contract or make over the Agreement or any part thereof without the prior written consent of EMCS.
- 16.2 No failure, delay or omission by EMCS in exercising any right, power or remedy provided by law or under the Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Agreement by EMCS shall prevent any future exercise of it or the exercise of any other right, power or remedy by EMCS.
- 16.3 All rights and remedies available to EMCS under the terms of the Agreement or under law are to be cumulative and not exclusive of any rights and remedies provided by law, and no exercise by EMCS of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Agreement or otherwise available.
- 16.4 The Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 16.5 Each party acknowledges that it has not entered into the Agreement or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Agreement or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Agreement.
- 16.6 Any notice required to be given hereunder by any party shall be in English and be signed by, or on behalf of, the party giving it and shall be delivered in person, by first class post or email to the other party at the address set out in the Agreement. Any such notice shall be deemed to be received:
- 16.6.1 hand delivery: at the time of delivery;
- 16.6.2 email: provided confirmation is sent by first class post within 24 hours of transmission: on receipt of a delivery email from the correct address; and
- 16.6.3 pre-paid first class post: 48 hours from the date of posting, but if deemed receipt is not within the hours of 9:00am and 5:00pm on a working day, at 9:00am on the first working day following delivery. For the purposes of this clause "working day" means Monday to Friday (excluding bank holidays in England).
- 16.7 This clause does not apply to notices given in legal proceedings or arbitration.
- 16.8 All reference to any legislation shall include references to such legislation as amended or re-enacted from time to time.
- 16.9 The Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 16.10 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement, its subject matter or formation (including non-contractual disputes).
- 16.11 Subject to clause 12.4, the Agreement does not create any right enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the rights of a part is deemed to be a party to the Agreement.
- 16.12 The parties are independent persons and are not partners, principal and agent or employer and employee and the Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 16.13 If any provision of the Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

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- 16.14 Any dispute arising between the parties out of or in connection with the Agreement shall be dealt with in accordance with the provisions of this clause 16.14:
- 16.14.1 the dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute;
- 16.14.2 the parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:
- 16.14.2.1 within ten working days of service of the notice, the contract managers of each of the parties shall meet to discuss the dispute and attempt to resolve it; and
- 16.14.2.2 if the dispute has not been resolved within twenty one working days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority) of each of the parties. The chief executives (or equivalent) shall meet within twenty one working days to discuss the dispute and attempt to resolve it; and
- 16.14.3 until the parties have completed the steps referred to in clause 16.14.2, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.
- 16.15 This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.
- 16.16 Each party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this agreement. Each party adopting this method of signing shall, following circulation by email, provide (on demand) the original, hard copy signed signature page to the other parties as soon as reasonably practicable.
- 16.17 This Agreement shall not be effective until each party has signed one counterpart.
- 17 DATA PROTECTION**
- 17.1 Both the Customer and EMCS will comply with all applicable requirements of Data Protection Legislation. This is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Legislation.
- 17.2 The Customer acknowledges that for the purposes of Data Protection Legislation, to the extent that EMCS is processing customer data, the Customer is the Data Controller and EMCS is a Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation) and the Customer appoints EMCS to process the customer data. The Data Processing Agreement is available to formalise how EMCS collect, manage and secure the customer data during the arrangement.
- 17.3 The Customer will ensure that it has all necessary consents and notices in place to enable lawful transfer of the customer data to EMCS for the duration and purposes of this Agreement and the Data Processing Agreement. As such, the Customer confirms that it is entitled to transfer the Customer Data to EMCS so that EMCS may lawfully use, process and transfer the customer data on the Customer's behalf in accordance with the Data Processing Agreement.
- 17.4 EMCS receive personal information on keyholders/system users of your system installations for the purposes of passing information to and from these individuals. This information is limited to information such as the active state of the system, VSS images (where relevant to the system being monitored) and information that may have been passed to the emergency services. This information is retained both within our control software database and voice recordings.
- 17.5 Retention Periods: The database is retained for the life of the contract plus 3 years. Voice recordings are retained for a period of 3 months. VSS Images are retained for 31 days unless we have justification for retaining for a longer period such as evidence in a criminal case.
- 17.6 EMCS do not pass this information to any person or organisation outside of validated system users/keyholders, the emergency services or to you as the customer.
- 17.7 Individuals have certain rights under Data Protection Legislation. More information is available in our Privacy Policy. This is available to view on our website ([www.emcs.co.uk](http://www.emcs.co.uk)).