



Equipment Housing Terms and Conditions

of Aqua Ray UK (as defined before) (hereinafter: "EH Terms and Conditions")

Clause 1 Definitions

1.1 The definitions, used in these EH Terms and Conditions, shall have the same meaning as they have in the General Terms and Conditions for Services of Aqua Ray UK. Other terms, used in these EH Terms and Conditions shall be defined as follows:

Acceptable Use Policy (AUP): The General Terms and Conditions that concern the use of the Premises, annexed to this document;

Engineer: An engineer performing the Hands & Eyes Services, acting upon the instructions and subjected to the direct control of the Customer;

Equipment Cabinet: The 19-inch cabinet as in accordance with the standards of the European Telecommunications Standard Institute, or a cabinet of equivalent standard, at the Premises, used by the Customer for the installation and operation of the Customer Equipment;

Equipment Housing Services: The provision of Customer Space and/or related Hands & Eyes Services as opted for by the Customer, according to the Services Form and as described in the Service Description;

Hands & Eyes Services: The provision of Rapid Response and/or Pre Scheduled Work Services by an Engineer, if opted for by the Customer and as described in the Service Description;

Occurrence: a deviation from the Services, caused by the Customer, through the Customer Equipment, or through a defect in any equipment under the control of or used by or on behalf of the Customer, or otherwise, that may cause or threatens to cause operational disturbances;

1.2 References to Clauses and Schedules are to clauses of these EH Terms and Conditions, respectively the schedules that form part of the Agreement.

1.3 The headings to the clauses of these EH Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction thereof.

1.4 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or reenacted.

1.5 Use of the singular includes the plural and vice versa, use of any gender includes the other genders; any reference to persons includes natural persons and legal persons, including, but not limited to firms, partnerships, companies, corporations, associations, organizations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).

1.6 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7 A reference to a certain document is a reference to that other document as amended, varied, supplemented, or renewed from time to time.

Clause 2 Services

2.1 Aqua Ray UK shall use all reasonable endeavors to provide the Services, in accordance with the Annexes and Schedules, but does not warrant any results of the Services, except to the extent the Service Level Agreement explicitly stipulates otherwise.

2.2 To the extent the Services fail to meet the service levels set out in the Service Level Agreement, Aqua Ray UK shall grant the Customer service credits as set out therein (subject always to the limitations set out in the Service Level Agreement). The Customer agrees that the service credits shall be its sole and exclusive remedy for failure by Aqua Ray UK to achieve the service levels. The Parties agree that such service credits are a genuine pre-estimate of the loss suffered by the Customer in the event of such failure.

2.3 In the event an Occurrence comes to the attention of either of the Parties, that Party shall immediately inform the other Party of this fact and, if possible, on a probable cause of the Occurrence.

2.4 Promptly upon receipt of such information as referred to in clause 2.3 hereof, the Customer shall:

- (a) at its own costs initiate all reasonable measures and commit all such actions using all reasonable efforts to remove, repair, correct, undo or in any other way discontinue the fault or defect that causes the Occurrence, and inform Aqua Ray UK by Notice of the measures taken in this respect; and
- (b) keep Aqua Ray UK informed by Notice of the progress made in relation to the obligation as referred to under (a) and
- (c) promptly upon completion of the actions as referred to under (a), inform Aqua Ray UK by Notice of such completion and its results.

2.5 Aqua Ray UK may, at its sole discretion and without incurring any liability, suspend the Customer's access to the relevant Aqua Ray UK Facilities or to the Premises until the fault or defect that causes or may cause the Occurrence has been adequately corrected in accordance with Clause hereof and until Aqua Ray UK has informed the Customer by Notice of such correction.

2.6 If the Customer fails to correct the fault or defect that causes or may cause the Occurrence, or fails to do this within a reasonable period, at the sole discretion of Aqua Ray UK, Aqua Ray UK is entitled to correct such fault or defect itself, at the costs of the Customer. The Customer shall indemnify Aqua Ray UK for any and all claims, complaints and actions that other customers or third parties may bring against Aqua Ray UK in relation to an Occurrence.

2.7 If a deviation from the Services occurs, caused by another customer of Aqua Ray UK, through the facilities of such other customer, or through a defect in any equipment under the control of or used by or on behalf of such other customer, or otherwise, that may cause or threatens to cause operational disturbances, Aqua Ray UK will not be liable to the Customer for possible damages that it incurs as a consequence of such deviation(s).

Clause 3

Customer Rights and Obligations

Access

3.1 The Customer's personnel and third parties, appointed by the Customer as "owning a permanent right of access", and to whom the Customer has provided access passes as described in the Acceptable Use Policy, shall (without prior Notice being required) be entitled to enter the Premises, for the purpose of

- a) inspecting or installing the Customer Equipment, or
- b) carrying out all necessary maintenance and repair to the Customer Equipment which Aqua Ray UK is not obliged to provide under the Agreement.

Other Customer's personnel and third parties shall be granted access (i) under normal circumstances upon twenty four (24) hours Notice from the Customer to Aqua Ray UK, and (ii) in case of (at the discretion of Aqua Ray UK) urgency upon thirty (30) minutes Notice by the Customer to Aqua Ray UK, stating the reason for urgency. Notices in relation hereto shall be made to Aqua Ray UK's European Services Center, as referred to in the Service Level Agreement. Under no circumstances shall Aqua Ray UK be liable to the Customer, its customers, or third parties for interruption of the Services or for any other loss, costs or damages caused by or related to improper use or maintenance of the Customer Equipment and/or Aqua Ray UK Facilities by Customer or third parties appointed by Customer.

3.2 Customer shall follow all instructions of Aqua Ray UK with respect to access to the Premises, including but not limited to the instructions described in the Acceptable Use Policy.

3.3 Customer shall allow Aqua Ray UK access to the Customer Space to the extent reasonably required by Aqua Ray UK for any installation, inspection or maintenance.

Customer information

3.4 Customer shall provide Aqua Ray UK with all necessary information (equipment specifications and related information), specialist training and cooperation as Aqua Ray UK deems necessary to enable Aqua Ray UK to provide the Equipment Housing Services.

Inventory

3.5 At any time during the term of the Agreement, the Customer shall ensure that all Customer Equipment is safe and fit for its purpose and that it will not cause any damage to any property, equipment, facility or software belonging to or used by Aqua Ray UK or any other customer or other third parties, and that it will not hinder or impede the provision of services to any of Aqua Ray UK's customers. Prior to the Commencement Date, the Customer shall provide Aqua Ray UK with a full list and a detailed written description of all Customer Equipment that is or will be installed in the Customer Space and the Customer shall regularly update a list of all Customer Equipment installed.

Insurance

3.6 Customer warrants to Aqua Ray UK that it has in place a valid and sufficient liability insurance covering damage, in accordance with and appropriate to the nature and extent of its business activities, including but not limited to damage to the Aqua Ray UK Facilities, the Premises and any other equipment of Aqua Ray UK or of its customers or other third parties. Customer will have the Customer Equipment sufficiently insured against physical damage, theft, etc.

Usage of Customer Space

3.7 The Customer Space shall only be used for the purpose(s) as agreed upon under the Agreement.

3.8 The Customer may only allow the use of the Equipment Housing Services by third parties upon prior written approval from Aqua Ray UK.

Technical Conditions

3.9 The Customer warrants that the Customer Equipment:

- (1) Is certified for the purposes intended and complies with relevant national and international standards, as from time to time amended and/or supplemented;
- (2) is constructed, installed and maintained in such a way that failure and/or damage will not harm any other equipment or the operation of that other equipment, or endanger any personnel;
- (3) Conforms to all restrictions and complies with the Acceptable Use Policy, as from time to time amended and/or supplemented and provided to the Customer.

3.10 The Customer shall supply the Customer Equipment and shall have the sole responsibility for the fitting and installation in accordance with the Acceptable Use Policy by its own personnel or third parties at its own risk and costs.

3.11 If the Customer actually or allegedly has caused an alarm or a gas-fire extinguishing, Aqua Ray UK has the right to perform a thorough investigation of any such incident and the Customer shall cooperate fully with such investigation. Any costs incurred by Aqua Ray UK in this respect shall be borne by the Customer.

Equipment Delivery

3.12 The Customer shall inform Aqua Ray UK at least one Business Day in advance of the delivery, fitting or installation of the Customer Equipment. The Customer shall bear all costs for deliveries outside the regular

Business Hours

3.13 The Customer shall not bring any furniture, equipment and/or goods onto the Premises without the prior written consent of Aqua Ray UK, except to the extent that this is necessary for the exercise of the rights given to the Customer pursuant to the Services Form. The Customer is obliged to remove any other goods or dirt it has brought onto the Premises immediately.

Cabling

3.14 All cabling at the Premises by or on behalf of the Customer may only take place after prior written approval of Aqua Ray UK and shall only follow the routes designated by Aqua Ray UK in its instructions.

Obligations upon termination

3.15 Upon termination of the Agreement, the Customer shall have removed all Customer Equipment at its own risk and costs. The Customer shall pay for restoring the Customer Space, or any other part of the Premises used by the Customer, to the same condition as they were in at the Commencement Date.

3.16 If the Customer fails to remove the Customer Equipment or to restore the Customer Space by the date the Agreement terminates, Aqua Ray UK shall have the right, at the Customer's expenses, to remove the Customer Equipment from the Premises or to restore the Customer Space itself, and to deliver the Customer Equipment to the Customer at the address stated on the Service Form and to reinstate the Customer Space or any other part of the Premises used by the Customer to the same condition they were in at the Commencement Date. For every month, or part thereof, that the Customer has failed to meet the obligations as set forth in Clause 3.15, the Customer will be obliged to pay Aqua Ray UK damages that amount to twice the recurring fees as they were the day before the termination. The Customer will not hold Aqua Ray UK liable for

and waives any right to claim damages with regard to damage to or loss of the equipment after the Agreement has terminated.

3.17 The Customer shall reimburse all costs, damages and expenses incurred by Aqua Ray UK in connection with Clause 3.16 to Aqua Ray UK within fourteen (14) days of receipt of the invoice detailing such costs and expenses. Aqua Ray UK shall be entitled, at its sole discretion, to engage third party contractors to carry out the activities described in Clause 3.16 and to pass on any invoices from such third party contractors to the Customer who will pay for all reasonable charges appearing on such invoices.

Clause 4 Aqua Ray UK Rights and Obligations

Operation of environmental controls

4.1 Aqua Ray UK shall ensure that the air conditioning and other environmental controls in the Premises provide a suitable environment for the operation of the Customer Equipment in accordance with the service levels as reflected in the Service Level Agreement.

Maintenance of the Aqua Ray UK Facilities

4.2 Aqua Ray UK shall from time to time carry out preventive maintenance on the Aqua Ray UK Facilities at no charge to the Customer. Such preventive maintenance includes changes necessitated by technical developments.

4.3 Aqua Ray UK will perform normal maintenance and cleaning in the Premises and the Customer will allow Aqua Ray UK staff access to the Customer Space to perform its obligations as stipulated in this Clause.

4.4 Aqua Ray UK shall, in the event of service interruptions due to (preventive) maintenance activities, which are scheduled in advance, notify the Customer 10 (ten) workdays in advance. Aqua Ray UK shall discuss its long-term maintenance schedule with the Customer on a regular basis with a view to minimize disturbances and to allow the Customer to schedule its own preventive maintenance accordingly.

4.5 Aqua Ray UK shall, unless otherwise agreed between the Parties, carry out service interrupting maintenance activities to the Aqua Ray UK Facilities between 23:00 local time and 07:00 local time, unless, in Aqua Ray UK's reasonable opinion, an emergency situation exists, requiring essential maintenance activities to occur outside these hours. Customer will be immediately informed of the occurrence of such an emergency situation.

4.6 If the Customer has opted for the service level "Basic" or "Standard" as described in the Service Description the Equipment Housing Services may not comply with the specifications set forth in the Service Level Agreement during the maintenance services of Aqua Ray UK as described in Clause 4.2. In the event that service interruptions are inevitable a plan shall be developed along with Customer, which allows it to continue the provision of its services to third parties. Outages as a result of such maintenance services will not be taken into account to assess whether or not Aqua Ray UK has met its obligations or guarantees under the Agreement.

Ownership of Customer Equipment

4.7 Under no condition shall the Agreement vest any rights of Aqua Ray UK with respect to Customer Equipment, unless the Agreement explicitly stipulates otherwise. Aqua Ray UK is not entitled to use Customer Equipment for its own purposes. Aqua Ray UK shall not remove, alter or obscure any proprietary notices from the Customer Equipment.

Clause 5

Hands & Eyes Services

Hands & Eyes Services

5.1 The Hands & Eyes Services are performed using skill, diligence and care, and taking all reasonable measures to provide the Hands & Eyes Services with the best endeavors. Notwithstanding the previous sentence, Aqua Ray UK does not, implicitly or explicitly, undertake to achieve or warrant any result of any Hands & Eyes Services performed, except to the extent that the Service Level Agreement does provide guarantees.

5.2 The Hands and Eyes service offers generic Rapid Response and Pre Scheduled Work services as described in the Service Description.

5.3 Aqua Ray UK has no obligation to provide the Engineer or the Customer with any special tools or any spare parts to the Customer Equipment in order to perform Hands & Eyes Services. Customer shall be solely responsible for the availability of such special tools or spare parts to the Engineer.

5.4 Customer shall indemnify Aqua Ray UK for any and all liabilities, damages, costs, charges and expenses incurred by Aqua Ray UK resulting from or arising out of or in connection with any damages to third parties or properties of third parties in the performance of the Hands & Eyes Services.

5.5 The Customer shall at all times remain responsible for implementation and installation of Customer Equipment. Aqua Ray UK shall not, by the mere fact that it has assisted in the implementation and/or installation pursuant to the Installation Support Rapid Response and Pre Scheduled Work services as defined in the Service Description, be responsible or liable for the results of such implementation and/or installation.

Clause 6

Power usage fees

6.1 Notwithstanding any provision to the contrary in the Agreement, in the event that the market price for power usage (kWh) increases with 5% or more, the fees with respect to power usage will be adjusted accordingly.