Standard Subcontract Terms & Conditions

This Agreement ("the Agreement") applies to the provision of all goods and services provided by "you" (or "the Subcontractor") to THE CLARUS NETWORKS GROUP LIMITED (SC806571) a company incorporated under the Companies Act 2006 and having its registered office at 2f Inchmuir Road, Whitehill Industrial Estate, Bathgate EH48 2EP ("Clarus").

The contracting Clarus Group Company ("Clarus") is as detailed in the Order and only that company shall be subject to the terms of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms, the following definitions shall apply:

1.1.1. **"Agreement"** means the agreement between you and us to supply the Services, made up of these Subcontract Terms and the Order, provided that if there is any conflict between the Order (incorporating the Subcontract Scope of Work) and the Subcontract Terms, the Order prevails over the Subcontract Terms;

1.1.2. **"Clarus", "we", "us", or the "Clarus entity" identified in the Order** means the entity procuring the Services from you under the Agreement;

1.1.3. **"Code of Conduct for Engineers"** means our Code of Conduct that all engineers and sub-contractors need to follow, as may be updated from time to time. Copies of which are available on request or can be found at https://www.clarus-networks.com/policy-documents/;

1.1.4. **"Data Protection Law"** means the Data Protection Act 2018, UK GDPR as defined by section 2 of The Data Protection, Privacy and Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019 and all relative UK data protection legislation in force and as amended or replaced from time to time;

1.1.5. **"Deliverables"** means all documents, products, materials and end results produced by you, your authorised sub-contractors or agents, contractors and employees as part of or in relation to the Services in any form or media;

1.1.6. **"Intellectual Property Rights"** and **"IPRs"** means all copyright, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, rights to inventions, business names and domain names, product names rights in get up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in computer software (including object code and source code), semi-conductor topography rights together with all trade secrets, discoveries, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all applications for, and rights to renew, the same;

1.1.7. **Legislation**: any statute, statutory provision or subordinate legislation or any mandatory rules issued by any regulatory body having jurisdiction over the applicable party

1.1.8. **"Main Contract"** means the agreement between us and our customer as attached at Schedule II;

1.1.9. **"Order"** means our written order that we give to you for the provision by you of the Services;

1.1.10. **"Privacy Policy"** means our data privacy policy, as may be updated from time to time, a copy of which is available on request or can be found at https://www.clarus-networks.com/privacy-policy/;

1.1.11. "**Services"** means the subcontract services and works, including any Deliverables, that you are to provide to us under the Agreement, set out in the Subcontract Scope of Work;
1.1.12. **"Starlink"** means Starlink Internet Services Limited having its registered office at Floor 3, Block 3, Miesian Plaza, Dublin 2, D02 Y754, Ireland;
1.1.13. **"Starlink Kit"** means the Starlink equipment supplied by Clarus to you or to the customer to enable you to complete the installation;
1.1.14. **"Subcontract Scope of Work"** the specification of Services set out in, or appended to the Order, including all site requirements, drawings, instructions, specifications and programme of work;
1.1.15. **"Subcontract Terms"** means these subcontract terms and conditions, as may be updated from time to time and viewed on Policy Documents - Clarus Networks; and
1.1.16. **"you", "your"** means the subcontractor identified in our order who is to supply subcontract services to us.

2. Interpretation

2.1. These Subcontract Terms will be interpreted without reference to their headings. In the Agreement any reference to "include", "including", "such as" or "in particular" or any similar term will be construed without limitation.

2.2. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2.3. A reference to a URL is a reference to that URL as amended from time to time.

2.4. Unless otherwise stated, a reference to a day means a calendar day.

2.5. Notices must be given in writing. Any reference to "writing" or "written" includes communication by email.

3. Basis of contract

3.1. The Order constitutes an offer by us to purchase the Services in accordance with these Subcontract Terms.

3.2. The Order will be deemed to be accepted on the earlier of:
3.2.1. your written acceptance of the Order, or
3.2.2. any act by you consistent with fulfilling the Order
at which point the Agreement will come into existence (Effective Date).

4. Subcontract Terms and Main Contract

4.1. These Subcontract Terms apply to the Agreement to the exclusion of any other subcontract terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. In the event of any conflict between these Subcontract Terms and the Order, the Order shall take precedence.

4.2. You acknowledge that the Agreement is a subcontract to the Main Contract..

4.3. You will be bound to us in respect of the Subcontract Scope of Work as we are bound to our customer under the Main Contract.

5. Subcontractor obligations

5.1. You will:

5.1.1. provide the Services in accordance with the Agreement and in accordance with the Order;

5.1.2. perform the Services with the best care, skill and diligence in accordance with best practice in your industry, profession or trade;

5.1.3. co-operate with us and with our customer in all matters relating to the Services, and comply with our instructions;

5.1.4. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that your obligations are fulfilled in accordance with the Agreement;

5.1.5. maintain a professional standard and attitude, follow all Clarus and Site procedures and ensure all tasks are completed efficiently and correctly;

5.1.6. ensure that the Services will conform with all descriptions, standards and specifications set out in the Subcontract Scope of Work, and that the Deliverables will be fit for any purpose that we or our customer expressly or impliedly makes known to you;

5.1.7. provide all equipment, tools and vehicles and such other items as are required to provide the Services;

5.1.8. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to our customer, will be free from defects in workmanship, installation and design;

5.1.9. obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

5.1.10. comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, and with your obligations under the Code of Conduct for Engineers;

5.1.11. observe all health and safety rules and regulations and any other security requirements that apply at any of our or our customer's premises;

5.1.12. hold registration with https://www.constructionline.co.uk to a minimum of Silver status, hold one SSIP (Safety Schemes In Procurement) accreditation (or similar accreditations), be certified with the Construction Skills Certification Scheme (CSCS or similar) and undertake to complete our own pre-qualification questionnaire relevant to the services to be provided;

5.1.13. hold all materials, equipment and tools, drawings, specifications and data supplied by us (or by our customer) to you in safe custody at its own risk, maintain such materials in good condition until returned to us (or our customer, as the case may be), and not dispose or use such materials other than in accordance with our written instructions or authorisation;

5.1.14. not do or omit to do anything which may cause us or our customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and you acknowledge that we or our customer may rely or act on the Services;

5.1.15. complete the Services and all specified stages of them by any milestone date(s) set out in the Subcontract Scope of Work. A failure to comply with this obligation will be considered a material breach allowing for immediate termination of the Agreement in accordance with clause 9.1.1.1; and

5.1.16. comply with any additional obligations as set out in the Subcontract Scope of Work.

5.2. We have the right, on reasonable notice, to inspect the Deliverables at any stage. After inspection, if we decide (in our absolute discretion) that the Deliverables are unsatisfactory in any respect, we can reject the Deliverables in whole or in part. Inspection or lack of inspection of any of the Deliverables by us does not constitute acceptance by us.

5.3. Without prejudice to our rights under clauses 9.1 and 20, you will notify us immediately if at any time you foresee any difficulty in complying with any milestone date(s) in the Subcontract Scope of Work or any other part of it.

5.4. You will promptly and without further charge, rectify any defects in the provision or carrying out of the Services, both during the progress of the works and throughout the any defects liability period that may be included in the Main Contract, or in any materials that you supply in relation to the Services.

5.5. You will indemnify us in full against all losses, claims, liabilities, costs, expenses, demands and damages incurred or suffered by us under or in connection with the Agreement, including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses, and including all claims for liquidated damages by our customer against us arising out of the Subcontract Scope of Work, including but not limited to all and any claims brought against us for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services; and any claim made against the us by a third party arising out of, or in connection with, the supply of the Services. This clause 5.5 will survive termination of the Agreement.

5.6. Any Equipment and Starlink Kit must be securely installed in a location with a clear field of view and, for Starlink Kit, in accordance with the Starlink Install Guide. Customer shall not modify the Starlink Kit in any manner that is contrary to the Install Guide or would otherwise alter the transmission characteristics of the Starlink Kit, including installation under a radome without prior Starlink written approval. Installation or modification of Starlink Kit which has, in Starlink's sole discretion, resulted in material degradation of the products, may void any Starlink Kit warranty.

5.7. All subcontractors must complete the Installation form as provided by Clarus Networks. Installation forms must be completed fully, including details and photographs of installation and signed off by the customer representative. All installation forms must be returned within 24 hours of installation completion

6. Price, payment and cancellations

6.1. The price for the Services stated in the Agreement is fixed for the term of the Agreement. All projects must be quoted and agreed prior to commencement on site. The price is inclusive of all design work and fees, preparation of drawings and specification, the supply of all materials, labour, equipment and everything else that is needed for the full and proper performance and carrying out of the Services and is inclusive of value added tax unless otherwise stated in the Agreement.

6.2. You may invoice us for the price of the Services (plus VAT if applicable) at the agreed price on or at any time after the completion of the Services or the completion of a milestone specified in the Agreement. Invoices must be emailed to invoices@clarus-networks.com.

6.3. You will ensure that the invoice includes the date of the Order, the invoice number, Clarus Zoho project Number, Customer Name and address of installation as assigned by us to the Order, your VAT registration number, the project, including the address in respect of which the Services are provided and any supporting documents that we may reasonably require.

6.4. We will pay any correctly rendered and undisputed invoices within 30 days of the invoice date. Payment will be made to the bank account nominated in writing by you.

6.5. Any interim payments that the parties may agree to will be considered to be held on account only and will not, under any circumstances, be construed to be approved by us or our customer of the whole or any part of the Services until and unless approval and sign-off has been provided.

6.6. Notwithstanding clause 6.5, we reserve the right to bring a claim against you where it later transpires that there were defects associated with the provision of the Services and the end result.

6.7. We may at any time, without limiting any of our other rights or remedies, set off any liability that you have to us against any liability we have to you, including the right to off-set any payment due to you against any costs we incur in fixing any defects that arise as a result of your inadequate workmanship. Any exercise by us of our rights under this clause will not limit or affect any other rights or remedies available to us under the Agreement or otherwise.

6.8. Clarus holds the right to cancel a UK based installation with 48 hours notice free of charge. If installation is cancelled within 48 hours of install taking place, Clarus will pay any agreed cancellation fee detailed in the Order. For Non UK and Maritime installations Clarus holds the right to cancel free of charge with 72 hours notice.

7. Intellectual Property Rights

7.1. All intellectual property rights in any drawings, data, literature or other materials (our IPRs) supplied by us relating to the Agreement and all other IPRs of Clarus will remain our exclusive property at all times.

7.2. We grant you a fully paid up non-exclusive, royalty-free, non-transferable licence to use the materials and IPR we provide you with, for the term of the Agreement, for the sole purpose of providing the Services.

7.3. You will not, under any circumstances disclose or use our IPRs except as strictly necessary for the purpose of fulfilling your obligations under the Agreement.

7.4 Any and all IPRs in the Deliverables and/or created in the course of the provision of the Services, including designs, shall vest in Clarus and you hereby irrevocably assign same to and in favour of Clarus.

7.5 This Agreement does not grant to you any right to any third party IPRs, including, but not limited to, those owned by Starlink.

8. Insurance

8.1. During the term of the Agreement and for a period of 6 years after termination you must have in place all insurances with such level of cover as would be appropriate for a responsible business carrying out the Services and you must provide us on request with written confirmation from your insurers or brokers of the insurances and level of cover you have, including public & product liability, employers liability, professional indemnity insurance and contractors all risks insurance together with details of the renewal date and confirmation that premiums have been paid up to date.

8.2. Where the Services provided by you include or consist of the transportation or other movement of our products or property, you must have in place appropriate insurance to cover any damage (either partial or total loss) of such items while in your care, custody or control, to at least their full replacement value. You will, if and when we request, provide us with evidence of such insurance, up to an adequate limit of insurance cover for the Agreement.

9. Termination

9.1. Without limiting or affecting any other right or remedy available to us, and notwithstanding any other provision of the Agreement, we may terminate the Agreement:

9.1.1. with immediate effect by giving you written notice if

9.1.1.1. you commit a breach of any provision of the Agreement which we consider in our absolute discretion to be a material or repeated breach and, where such remedy is capable of remedy (in our sole opinion), you fail to remedy it within 7 days after receiving notice from us requiring you to remedy it;

9.1.1.2. you breach clauses 5.1.9, 5.1.10, 5.1.11, 5.1.14 or clause 11;

9.1.1.3. in our sole opinion you fail to carry out the Services diligently and/or you fail to carry out or complete the Services in accordance with the Agreement;

9.1.1.4. you fail to withdraw, immediately at our request, any person engaged by you in the carrying out of the Services whose presence in our opinion may contravene the terms of the Agreement or Main Contract or in respect of whom we have given you notice requiring their withdrawal;

9.1.1.5. a receiver, administrative receiver, administrator or liquidator is appointed in relation to all or part of your assets;

9.1.1.6. you cease to trade or you undergo any insolvency event or proceedings including, but not limited to, being presented with a winding up petition, passing a resolution for voluntary winding up or enter into a voluntary arrangement with your creditors;

9.1.1.7. you undergo a change of control;

9.1.1.8. your financial position deteriorates to such an extent that in our reasonable opinion your capability to adequately fulfil your obligations under the Agreement is placed at risk; or

9.1.1.9. if the Main Contract is terminated for any reason, in which case the Agreement will terminate immediately and automatically, without further action being necessary, and subject to all rights accrued up to the date of termination;

9.1.2. or

9.1.10 for convenience by giving you one month's written notice.

9.2. If the Agreement is terminated, you will be entitled to be paid the price for the Services properly provided up to the date of termination less any sums we have to expend, including with other contractors, in order to have the Services properly and fully carried out and completed and/or to remedy or rectify any Services provided by you.

9.3. Termination or expiry of all or part of the Agreement however it arises, will not affect either of the parties' rights and remedies that have accrued at the date of termination or expiry, including the right to claim damages or any other remedy in respect of any breach of the Agreement that existed at or before the date of termination or expiry.

9.4. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after the date of termination or expiry will remain in full force and effect after the date of termination or expiry.

10. Design indemnity

10.1. Where the Services include a design responsibility you will:

10.1.1. exercise all reasonable skill, care and diligence that would be expected of a skilled designer experienced in carrying out the works requested and indemnify us fully against all costs and losses arising from breach of your breach of this clause 10;

10.1.2. take out and maintain professional indemnity insurance in such amount and for such period as may be required under the Main Contract or otherwise communicated to you; and

10.1.3. enter into collateral warranties with us and/or our client and those other persons specified by them in the format and in accordance with the timescales required by the Main Contract.

11. Environment, Health and Safety

11.1. In addition to the requirements of clause 5.1.9, 5.1.10 and 5.1.11 you will:

11.1.1. provide a competent person in charge to supervise your workforce and to take responsibility for all their health and safety issues and to receive and implement instructions issued by our authorised representatives;

11.1.2. submit risk assessments including, but not limited to, all hazards, COSHH and manual handling for approval by our Projects team prior to commencing any work on site. You will provide COSHH assessments supported by manufacturer's data sheets with all materials that you supply; and

11.1.3. remove all rubbish and surplus material arising from your works to a designated area or a skip or, if so instructed, remove from site.

12. Limitation of liability

12.1. Without prejudice to clause 12.2, our maximum aggregate liability for breach of the Agreement (including any liability for the acts or omissions of our employees and agents), whether arising in contract, delict (including negligence), misrepresentation or otherwise, will in no circumstances exceed the aggregate amount paid by us under the Agreement during the 12 months prior to the occurrence of such cause.

12.2. Nothing in the Agreement will exclude or in any way limit:

12.2.1. either party's liability for death or personal injury caused by its own negligence; and

12.2.2. either party's liability for fraud or fraudulent misrepresentation.

12.3. The Agreement sets out the full extent of our purchase obligations and liabilities to you and Clarus is under no obligation to place any Order with you. To the fullest extent permitted by law, we exclude all other conditions, warranties or other terms, express or implied, whether by statute, common law or otherwise.

12.4. Without prejudice to clause 12.2, we will not be liable under the Agreement for any loss of profit, loss of revenue, loss of business, or for any indirect or consequential loss or damage, in each case, however caused, even if foreseeable.

13. Confidentiality, data protection, and publicity

13.1. You undertake that you will not at any time disclose to any person any Confidential Information including that concerning our business, affairs, customers, clients or suppliers, except as permitted by clause 13.2.

13.2. You may disclose our Confidential Information:

13.2.1. to your employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out your obligations under the Agreement. You will ensure that your employees, officers, representatives, subcontractors or advisers to whom you disclose our confidential information comply with this clause 13; and

13.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3. You will not use our Confidential Information for any purpose other than to perform your obligations under the Agreement.

13.4. For the purpose of this clause 13, "Confidential Information" means all information, data and materials in respect of our business and financing, products and services and/or in respect of any other party which is disclosed or made available to you by us including, but not limited to, any ideas, business methods, finance, prices, financial marketing development or manpower, plans, drawings, market opportunities, product information, design rights and other IPRs, customer information, trade secrets, details, computer systems, software listings, software know-how on any medium and other matters connected with the products or services manufactured, marketed, provided or obtained by us together with any other information that is identified as being of a confidential or proprietary nature or which a person would, acting reasonably and in all the circumstances, consider confidential.

13.5. You will not disclose personal data to us other than to the extent necessary for the performance of the Agreement. We will process any such personal data as a data controller in compliance with Data Protection Laws and in accordance with our Privacy Policy.

13.6. Publicity – You will not, without Clarus' prior written consent, issue or authorise any press release, public announcement, marketing or promotional material, case study, or social media post (including but not limited to photographs, videos, or descriptions of any installation, site, or work carried out under any Agreement) that references Clarus, any Clarus customer, Starlink (or any of its affiliates), or the Services.

13.7. Trademarks and logos - You will not use, reproduce, or display the name, logo, trademark, or brand of Clarus, any Clarus customer, or Starlink (or any of its affiliates) in any marketing, promotional advertising, or social media material, without Clarus' prior written consent.

13.8. No representation of relationship with Starlink – You will not represent, imply, or hold yourself out (whether in marketing material, social media, correspondence, or otherwise) as having any direct contractual, partnership, or commercial relationship with Starlink. You acknowledge that your relationship is solely with Clarus under the Agreement and that any rights or licenses relating to Starlink Kit or IPR's are as set out in clause 7.

13.9. Breach – A breach of clauses 13.6-13.8 will be considered a material breach for the purposes of clause 9.1.1.1, entitling Clarus to terminate the Agreement with immediate effect.

14. Waiver and amendment

14.1. A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.

14.2. We may change the provisions of these Subcontractor Terms (other than the price and payment terms) by giving notice to you and/or by publishing such changes on our website.

14.3. Other than changes permitted by clause 14.2, no other provision of the Agreement will be amended in any way unless agreed by us in writing.

15. Severability

15.1. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision will be deemed deleted. Any modification to or deletion of a provision or part-provision pursuant to this clause will not affect the validity and enforceability of the rest of the Agreement.

16. Entire agreement

16.1. The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

17. Notices

17.1. Any notice or other written communication between the parties will be effective if sent by pre-paid post, by email, or delivered by hand to the address of the other party and will be deemed to have been received:

17.1.1. if sent by post 2 working days after posting;

17.1.2. if sent by email at the time of transmission, or, if this time falls outside a working day in the place of receipt, on the next working day; or

17.1.3. if delivered by hand on the date of delivery.

18. Third party rights

18.1. Unless expressly stated to the contrary, the Agreement does not give rise to any rights under the Contract (Third Party Rights)(Scotland) Act 2017 to any third party who is not a party to the Agreement to enforce any term of the Agreement.

19. No assignment of subcontracting

19.1. You will not assign your rights under the Agreement or subcontract any part of the performance of the Agreement without our prior written consent. If we consent to any subcontracting by you, you will remain responsible for all the acts and omissions of your subcontractors as if they were your own.

20. Force majeure

20.1. Neither party will be in breach of the Agreement or liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond that party's reasonable control (such as war, acts of terrorism, extreme weather conditions, earthquakes, fire, floods, traffic congestion, mechanical breakdown (including of machinery, equipment and vehicles), any public or private road being blocked, or industrial action (including by our own or our agents' or sub contractors' workforce), disease, pandemic and epidemic).

20.2. The party affected by the force majeure event will tell the other promptly about any event of force majeure as described in clause 20.1 that affects its performance of the Agreement and will try to mitigate the effect of such event on the performance of its obligations.

20.3. If the party affected is unable to perform its obligations for a continuous period of four weeks, the other party (or Clarus, if not the affected party) may terminate the Agreement immediately by giving notice.

21. Governing law and jurisdiction

21.1. The Agreement and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with Scots law.

21.2. You irrevocably submit to the exclusive jurisdiction of the Scottish courts to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.