





## Hyrde Integrated Solutions: Terms and Conditions

### CHAPTER 1 – General Provisions: Terms of Sale

#### 1. General provisions

- 1.1. This chapter one applies in combination with the applicable special provisions as set out in chapter two and following. If the general provisions, or any part thereof, contradict or are inconsistent with the special provisions, the special provisions prevail.
- 1.2. The quote and these general terms and conditions together constitute, and will be referred to as, the **Agreement** as concluded between Hyrde B.V. (**Hyrde**) and its customer (the **Customer**) (each referred to as a **Party** and jointly referred to as **Parties**), for the purpose of providing the products and/or services (**Products** and/or **Services**) described in the relevant order or statement of work (hereinafter both referred to as: **Order**).

#### 2. Orders

- 2.1. A quote given by Hyrde shall not constitute an offer. A quote shall only be valid for a period of 14 business days from its date of issue.
- 2.2. Each of Customer's Orders shall be deemed to be a separate offer by the Customer to purchase Products and/or Services on the terms and conditions included in this Agreement, which Hyrde shall be free to accept or decline at its absolute discretion. The Customer is responsible for ensuring that the content of the Order is complete and accurate.
- 2.3. No Order shall be deemed to be accepted by Hyrde until explicitly accepted in writing by Hyrde. Accordingly, any acceptance of the Order by Hyrde shall establish a contract for the sale and purchase on the terms and conditions in this Agreement.
- 2.4. Each Order shall:
  - a. be confirmed by Hyrde in writing within one(1) business day; and
  - b. specify the type and quantity of the Products and/or Services ordered.
- 2.5. Hyrde may assign an order number to each Order it accepts and notify those order numbers to the Customer, together with the delivery date on which the Products specified in an Order will be ready for collection, or on which the Services will be delivered. Each Party shall use the relevant order number in all subsequent correspondence relating to the Order.
- 2.6. The Customer shall not be able to amend or cancel an Order after it has been accepted by Hyrde, unless explicitly approved by Hyrde.

#### 3. Prices, invoicing and payment

- 3.1. The Customer shall pay the charges for the Products and/or Services as specified in the Order.
- 3.2. All charges are specified in and inclusive of packaging, but exclude sales tax (VAT), customs duties, other government imposed levies and transport to the delivery location designated by the Customer. Customer must complete all payments in
- 3.3. Hyrde shall invoice the Customer monthly at the end of the month any Services and payment shall take place via direct debit (*automatische incasso*), for which the Customer hereby grants its approval. Hyrde may allow Customer to pay charges via a bank transfer, provided that:
  - a. payment shall take place in full and in cleared funds to a bank account nominated in writing by Hyrde within 30 days of the date of the invoice; and
  - b. Hyrde may at any time require Customer to pay via direct debit again.

#### 4. Timing

- 4.1. Delivery times/dates are approximate only. As soon as Hyrde becomes aware, or expects, that it cannot perform within the agreed periods, Hyrde will inform the Customer. Hyrde shall have no liability for any failure of, or delay in delivery to the extent that any failure or delay is caused



by the Customer's failure to comply with its obligations under the Agreement attributing to the delay.

- 4.2. If delivery of hardware is delayed, parties will initiate discussions to agree on a reasonable extension, not to exceed two (2) additional weeks as from the original delivery date. If Hyrde fails to meet this second performance date, the Customer is entitled to cancel the relevant delivery, after which Hyrde shall refund any prepaid amounts. This clause describes the Customer's sole remedy with regard to delays.

## 5. Privacy Legislation

- 5.1. In fulfillment and execution of this Agreement, each Party shall, at its own expense, ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including the General Data Protection Regulation ((EU) 2016/679).
- 5.2. A Party does not transfer personal data to, nor makes personal data accessible from, a location outside the European Economic Area, unless agreed in writing in advance. Each Party will take appropriate technical, legal and organisational security measures to protect the interests of the other Party and its (personal) data and, in any event, will act in accordance with the industry standard.
- 5.3. Each Party shall immediately inform, and in any event within 24 hours of becoming aware, the other Party of any actual or suspected security breach involving personal data. Each Party shall take adequate remedial measures immediately and shall promptly provide the other Party with all relevant information and assistance as reasonably requested by such Party regarding the security breach and as required by applicable data protection legislation.
- 5.4. If Parties are both considered to be a data controller under the applicable privacy legislation, both Parties shall adhere to all statutory requirements and rules of law in respect to the processing of personal data and shall make additional arrangements in relation thereto insofar required under, and in line with, mandatory law.

## 6. Intellectual Property

- 6.1. **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names and database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 6.2. All relevant Intellectual Property Rights are and shall remain the exclusive property of the Party owning them (or, where applicable, the third party from whom its right to use the Intellectual Property Rights has been derived). All Intellectual Property Rights that are created by Hyrde or Hyrde's personnel in the course of providing the Services will be owned by Hyrde (unless specifically agreed otherwise).
- 6.3. If Parties agree that the Customer will own certain Intellectual Property Rights that are specifically created or established for the Customer, such transfer shall be subject to full payment of all charges payable to Hyrde.
- 6.4. Hyrde hereby grants to the Customer, and its associated subsidiaries and (if applicable) holding company, or shall procure the direct grant to the Customer, and its associated subsidiaries and (if applicable) holding company, of, a fully paid-up, worldwide, non-exclusive license during the term of the Agreement to use and receive the (results of the) Services in its business. The Customer cannot sub-license, assign or otherwise transfer the rights granted in this clause.
- 6.5. The Customer is and remains the owner of all data, images, information, instructions and other content that is uploaded, imported, created or processed in the context of the Services (**Customer Data**), including all Intellectual Property Rights therein.
- 6.6. The Customer hereby grants Hyrde a fully paid-up, non-exclusive, royalty-free, irrevocable, perpetual licence to copy and modify any materials provided by the Customer to Hyrde for the



term of the Agreement as necessary for the purpose of providing the Services to the Customer. Furthermore, Hyrde will have the right to collect, extract, compile, synthesize and analyse Customer's user data, in an aggregated and anonymized form. The Customer hereby grants a non-exclusive, irrevocable, royalty-free, perpetual license to Hyrde to use such data for any lawful business purposes related to support and improvement of the Services.

- 6.7. The Customer hereby grants to Hyrde a fully paid-up, non-exclusive, irrevocable, perpetual license to use the results of the Services, including any developed, modified or enhanced Intellectual Property Rights, and any general knowledge, including but not limited to ideas, concepts, knowhow or techniques which Hyrde may have acquired in connection with the performance of the Services, for Hyrde's internal business purposes. Any (aggregated) data obtained via, or in connection with, the Services can be used by Hyrde without further restrictions, unless mandatory law requires otherwise.
- 6.8. Hyrde shall have no obligations with respect to any infringement claim to the extent that this arises or results from: (i) Hyrde's compliance with Customer's specific technical designs or instructions; (ii) inclusion in a deliverable of any content or other materials provided by Customer and the infringement relates to or arises from such Customer materials or provided material; (iii) modification of a deliverable after delivery by Hyrde to Customer if such modification was not made by or on behalf of Hyrde; (iv) operation or use of some or all of the Services or deliverables in combination with products, information, specification, instructions, data, materials not provided by Hyrde; or (v) use of the Services or deliverables for any purposes for which the same have not been designed or developed or other than in accordance with any applicable specifications or documentation provided under the applicable Order by Hyrde; or (vi) use of a superseded release of some or all of the Services or deliverables or Customer's failure to use any modification of the Services or deliverables furnished under this Agreement including, but not limited to, corrections, fixes, or enhancements made available by Hyrde.

## **7. Limitation of liability and Insurance**

- 7.1. Hyrde's aggregate liability under this Agreement (including indemnities and warranties), whether contractually or non-contractually, shall be limited to the lower of (i) the amount paid by Customer to Hyrde under the relevant Order (in case of a one-time purchase) or the amount equal to the annual value of the relevant Order (in case of long-term purchases) and (ii) EUR 50,000, unless the amount paid out under the relevant insurance policy of Hyrde is higher, in which case the paid out amount shall be the maximum amount.
- 7.2. Hyrde shall take out and maintain in full force and effect a liability insurance of not less than Euro 1 million in respect of each and every claim or series of claims arising from the same incident, such insurance to include liabilities as Hyrde may incur by reason of failure to manufacture and supply the Products and/or Services including, without limitation, in respect of product liability claims.
- 7.3. For there to be any right to compensation, Customer must always report the loss to Hyrde in writing as soon as possible after the damages have occurred. Each claim for compensation against Hyrde shall be barred by the mere expiry of a period of 6 months following the inception of the claim unless Customer has instituted a legal action for damages prior to the expiry of this period.
- 7.4. In no event shall Hyrde be liable for any claims and damages suffered or incurred by the Customer as a result of incorrect or wrongful use of the Products or Services by Customer or use of the Products or Services by Customer in violation of the instructions given by Hyrde.
- 7.5. In no event shall Hyrde be liable for any indirect damage, loss of profit, loss of turn-over, loss of goodwill, loss of reputation, loss of business opportunity, business interruption, loss of anticipated savings, or loss or corruption of data, reports or other information, suffered by the Customer that arises under, or in connection with, the Agreement.
- 7.6. The Customer shall indemnify and hold harmless Hyrde against (i) any third party claims to which the Customer has (re)sold Products obtained from or via Hyrde; (ii) any third party claims



that the Customer Data or Customer's use of the Products and/or Services infringes any third party (intellectual property) right; and (iii) any fines or other administrative penalties imposed by governmental or regulatory authorities arising from Customer's use of the Products and/or Services.

## **8. Confidentiality and Publicity**

- 8.1. Each Party undertakes that it shall not at any time during the term of this Agreement, and for a period of two (2) years after termination or expiry of this Agreement, disclose to any person any confidential Information concerning the business, affairs, customers or suppliers of the other Party or of any member of the group of companies to which the other Party belongs (explicitly including the (commercial) details of this Agreement), except as permitted by clause 9.2.
- 8.2. Confidential information shall not include information that:
  - a. is in or which comes into the public domain other than as a result of a breach of the obligations imposed by this Agreement or any other duty of confidentiality by any person to whom disclosure of information is made as permitted under this Agreement;
  - b. is received from a third party which is under no confidentiality obligation;
  - c. is independently developed by a Party without use of any disclosed confidential information; or
  - d. the disclosing Party has agreed in writing may be disclosed.
- 8.3. Each Party may disclose the other Party's confidential information:
  - a. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 9; and
  - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.4. No Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 8.5. Hyrde shall have the right to use the Customer's name and logo for promotional communications during, and after the termination of, this Agreement. In all instances will Hyrde ask permission from Customer.

## **9. Force Majeure (overmacht)**

- 9.1. The Parties reserve the right to defer the date for performance of their obligations under this Agreement (explicitly excluding Customer's obligation to pay any invoices due) if a Party is prevented from, or delayed in, carrying on its business by events of force majeure that affect the affected Party or its subcontractors.
- 9.2. In any such case, the performance of the affected Party's obligations, to the extent affected by the force majeure event, shall be suspended during the period that such event persists. If performance is not resumed within thirty (30) days after receipt of notice of delay caused by a force majeure event, the other Party may terminate (*opzeggen*) this Agreement immediately by written notice to the affected Party.

## **10. Audit**

- 10.1. The Customer shall allow Hyrde (or its professional advisors) to access the Customer's and its affiliates' premises, personnel, systems and relevant records to verify whether the Customer and/or its affiliates act in accordance with their obligations under this Agreement.
- 10.2. Subject to Hyrde's obligations of confidentiality in clause 9, the Customer and its affiliates shall provide Hyrde (and its professional advisors) with all reasonable co-operation, access and assistance in relation to each audit.
- 10.3. Hyrde shall provide at least five (5) business days' notice of its intention to conduct an audit and any audit shall be conducted during business hours.



- 10.4. Hyrde and its professional advisers shall have the right to take copies of any records which they reasonably require and the Customer shall provide the necessary facilities to assist in copying free of charge.
- 10.5. Parties shall be financially responsible for their own expenses incurred in relation to the audit. If the audit reveals that the Customer and/or its affiliates have not acted in accordance with their obligations under this Agreement and/or any applicable third party terms and conditions, the Customer shall reimburse Hyrde for all costs related to the audit. Hyrde is entitled to recover any unpaid charges, or the shortfall in payments made for the Products and/or Services provided.

## 11. Termination

- 11.1. Agreements entered into for a fixed term cannot be prematurely terminated. Any Agreements entered into for an indefinite period may be terminated at any moment for convenience (*opgezegd*) by either Party in writing with a notice period of 3 months. Any accepted Orders for the purchase of Products shall not be affected in any way by such termination.
- 11.2. In deviation of article 6:265 of the Dutch Civil Code, either Party may only terminate (*ontbinden*) the Agreement with immediate effect by giving written notice to the other Party if:
- the other Party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that Party being notified in writing to do so;
  - a receiver is appointed for the affected Party or affected Party's property;
  - affected Party makes an assignment for the benefit of affected Party's creditors; any proceedings are commenced by, for or against the affected Party under any bankruptcy, insolvency or debtor's relief law;
  - the affected Party commences steps to liquidate, dissolve or wind-up its business;;
  - the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 11.3. If (i) the Customer fails to pay any amount due under the Agreement on the due date for payment, or (ii) there is a(n) (in)direct change of control or ownership of the Customer, Hyrde may (without affecting any other right or remedy available to it):
- terminate (*opzeggen*) the Agreement with immediate effect by giving written notice to the Customer (in case of non-payment a written warning and delayed payment of one payment term will be given prior to termination); and
  - suspend the supply of Products and/or Services under the Agreement or any other agreement.

## 12. Consequences of termination

- 12.1. On termination or expiry of the Agreement, for whatever reason:
- Hyrde will return all Customer Data and related information to the Customer, in a file format to be determined by Hyrde;
  - obligations which by their nature are intended to continue even after termination of the Agreement will remain in force after termination of the Agreement. These obligations include inter alia clauses 6, 7, 8, 9, 11, 13, 15, 16 and 21;
  - all rights and licenses granted to the Customer will immediately cease to exist;
  - Hyrde may promptly cease performing all obligations under this Agreement;
  - all access by the Customer and its users to the Services will immediately be suspended; and
  - each Party shall delete from its systems (or return upon specific request of the other Party), all disclosed confidential information of the other Party.
  - Hyrde has the sole right to determine which hardware has to be de-installed and returned to Hyrde in case hardware is rented from Hyrde. Hyrde is responsible for all costs related to



de-installation and shipment of such hardware. Customer is responsible for all costs related to hardware not selected for return to Hyrde

### 13. Notices

Any regular notices can be sent via e-mail (email address of contact person and in all cases [info@hyrde.io](mailto:info@hyrde.io)). Any legal notices or other documents to be served under the Agreement may only be delivered or sent by registered post (*aangetekend*) to the Party to be served at its address set out in the Agreement, or at any other address or to any other addressee as it may have notified to the other Party in accordance with this clause.

### 14. Miscellaneous

- 14.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute a Party the agent of the other Party, or authorise a Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.2. If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.3. Deviations from and/or changes to these terms and conditions must be agreed upon in writing. The Agreement is concluded exclusively by a written confirmation from Hyrde.
- 14.4. The rights and obligations of Customer arising from one or more Agreement(s) with Hyrde cannot be transferred to a third party, whether fully or in part, without the prior written consent of Hyrde. This clause has effect under Dutch property law (*goederenrechtelijk effect*). The Customer hereby approves in advance (*bij voorbaat*) any transfer or assignment of the rights and obligations by Hyrde to any other group company that is part of the VolkerWessels Group.
- 14.5. The applicability of title 1 of book 7 and articles 6:228 and 6:230 of the Dutch Civil Code are hereby excluded.
- 14.6. If there is an inconsistency between any of the provisions of the Agreement and the Order, the provisions in the Order shall prevail.
- 14.7. Hyrde has the right to unilaterally amend these general terms and conditions from time to time. Hyrde will notify Customer of any amendment, and the amendment will enter into force 30 days after the provided notification.

### 15. Governing law and jurisdiction

- 15.1. This Agreement, as well as all requests for quotations and any other agreements between Parties, are governed by Dutch law. The 1980 United Nations Convention on Contracts for the International Sale of Goods (*Weens Koopverdrag*) and its related instruments will not apply.
- 15.2. Each Party irrevocably agrees that the courts of Midden-Nederland, location Amersfoort, The Netherlands shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## CHAPTER TWO – Sale of Hardware

### 16. Quality and packing

- 16.1. The Products supplied to the Customer by Hyrde under the Agreement shall:
  - a. substantially conform to the specifications provided by Hyrde; and
  - b. comply with all applicable statutory and regulatory requirements in The Netherlands and the UK.
- 16.2. Hyrde shall ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition.



- 16.3. The Customer acknowledges that Hyrde does not manufacture the Products itself, for which reason it will not be able to provide any warranties in relation thereto beyond the warranties provided by the manufacturers. Hyrde will use its best endeavours to forward any warranty given by the manufacturer of the Products to the Customer.
- 16.4. Hyrde shall comply with all applicable laws in The Netherlands relating to the packing, packaging, marking, storage, handling, and delivery of the Products.

## **17. Delivery**

- 17.1. Delivery of the Product is completed when Hyrde places the Products set out in the Order at the Customer's disposal at the delivery location (**Delivery**). The Delivery will be Ex-Works (EXW) in accordance with the Incoterms 2010, unless agreed otherwise between Parties in writing. Delivery does not include installation.
- 17.2. Hyrde may deliver Orders by instalments. Orders delivered by instalments may be invoiced separately by Hyrde. References in the Agreement to Orders shall, where applicable, be read as references to instalments.
- 17.3. If the Customer fails to take Delivery of an Order on the delivery date, then, except where that failure or delay is caused by Hyrde's failure to comply with its obligations under the Agreement:
- Delivery shall be deemed to have been completed on the delivery date; and
  - Hyrde may store the Order until Delivery takes place, and charge the Customer for all related costs and expenses (including insurance). If Customer fails to take Delivery within one (1) month of the delivery date, Hyrde is allowed to destroy the Products or use the Products for any other purpose, without the Customer being relieved from its obligation to pay the purchase price of the Products and/or to reimburse Hyrde for any additional costs.
- 17.4. Each Delivery shall be accompanied by a delivery note from Hyrde showing the order number, the date of the Order, the type and quantity of Products included in the Order and, if products are delivered by instalments, the outstanding balance of Products specified in an Order remaining to be delivered.

## **18. Acceptance and defective products**

- 18.1. The Customer may reject any Products delivered to it that do not comply with the obligations set out in clause 17.1, provided that notice of rejection is given to Hyrde:
- in the case of a defect that is apparent on normal visual inspection, within three (3) business days of Delivery;
  - in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
  - none of the events listed in clause 19.3 apply.
- 18.2. If the Customer fails to give notice of rejection in accordance with clause 19.1, it shall be deemed to have accepted the Products.
- 18.3. Hyrde shall not be liable for a Product's failure to comply with the obligations set out in clause 17.1 in any of the following events:
- the Customer makes any further use of those Products after giving notice of rejection;
  - the defect arises because the Customer failed to follow Hyrde's oral or written instructions for the storage, commissioning, installation, use or maintenance of the Products or (if there are none) good trade practice regarding the same;
  - the defect arises as a result of Hyrde following any drawing, design or specification supplied by the Customer;
  - the Customer alters or repairs those Products without the written consent of Hyrde;
  - the defect arises as a result of, wilful damage, negligence, or abnormal storage or working conditions; or
  - the Products differ from the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 18.4. If the Customer rejects Products under clause 19.1 then Hyrde shall (at its sole discretion) (i) repair or replace the rejected Products or (ii) repay the price of the rejected Products in full.





Once Hyrde has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Products' failure to comply with clause 17.1. Any replaced and/or rejected Products shall be owned by Hyrde. Insofar required, Customer shall transfer ownership thereof to Hyrde.

- 18.5. If Parties cannot agree on whether the Product fails to comply with clause 17.1, they shall refer the matter to an independent technical expert for determination.
- 18.6. The Parties are entitled to make submissions to the expert and will provide (or procure that others provide) the expert with all such assistance and documents as the expert may reasonably require for the purpose of reaching a decision. Each Party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other Party reasonably requires to make a submission under this clause.
- 18.7. The Parties agree that the expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.
- 18.8. The expert shall act as an expert and not as an arbitrator. The expert's decision shall be final and binding on the Parties in the absence of fraud or manifest error.
- 18.9. Each Party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs it properly incurs in arriving at its determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the Party against whom judgment has been given.

#### **19. Title and risk**

- 19.1. Risk in the Products shall pass to the Customer on Delivery. Title to the Products shall not pass to the Customer until the earlier of:
  - a. Hyrde receives payment in full (in cash or cleared funds) for the Products and all other sums that are or that become due to Hyrde from the Customer for sales of Products or Services, in which case title to these Products shall pass at the time of payment of all such sums; and
  - b. the Customer resells those Products, in which case title to those Products shall pass to the Customer at the time specified in clause 20.3.b.
- 19.2. Until title to the Products has passed to the Customer, the Customer shall:
  - a. store those Products separately from all other goods held by the Customer so that they remain readily identifiable as Hyrde's property;
  - b. not remove, deface or obscure any identifying mark or packaging on or relating to those Products; and
  - c. maintain those Products in satisfactory condition and keep them insured on Hyrde's behalf for their full price against all risks with an insurer that is reasonably acceptable to Hyrde. On request the Customer shall allow Hyrde to inspect those Products and the insurance policy.
- 19.3. The Customer shall always inform Hyrde of its intention to resell Products and shall not resell any Hyrde Products without the explicit prior written consent of Hyrde. If the Customer resells the Products:
  - a. it does so as principal and not as Hyrde's agent; and
  - b. title to those Products shall pass from Hyrde to the Customer immediately before the time at which resale by the Customer occurs.
- 19.4. Any warranties provided by Hyrde in relation to the Products shall terminate as of the moment the Customer has sold or transferred the ownership of such Products to any third party.

#### **20. Product recall**

- 20.1. If the Customer and / or Hyrde becomes aware of or is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products from the



- market (**Recall Notice**) it must immediately notify Hyrde in writing and attach a copy of the Recall Notice.
- 20.2. Unless required by law, the Customer may only undertake a recall or withdrawal of the Products from the market with the written permission of Hyrde and in accordance with this clause.
- 20.3. Hyrde may issue a Recall Notice if:
- the supply or use of the Products infringes, or may infringe, a third party's Intellectual Property Rights;
  - the Products are, or may be, unsafe;
  - the Products are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
  - a defect in the Products may cause harm to Hyrde's reputation or brand; or
  - any other reasonable ground.
- 20.4. The Customer must:
- comply with any Recall Notice; and
  - give such assistance as Hyrde reasonably requires to recall or withdraw the Products from the market, and comply with Hyrde's instructions about the process of implementing that recall or withdrawal.

### **CHAPTER THREE – Services**

#### **21. Provision of Services**

- 21.1. Hyrde shall provide consulting, connectivity and all other services (the **Services**) and any agreed deliverables (**Deliverables**) in accordance with this Agreement and the requirements set out in the relevant Order.
- 21.2. Hyrde undertakes to provide the Services and Deliverables in a professional and skilled manner using all reasonable skill care and diligence. Hyrde shall at all times be entitled to appoint new personnel to perform the Services.
- 21.3. The Customer shall reimburse travel costs and other expenses incurred by Hyrde during the provision of the Services, subject to Customer's prior written approval.

#### **22. Connectivity Services**

- 22.1. Hyrde shall provide connectivity services in accordance with and subject to the applicable terms and conditions of the third party connectivity provider. Except as expressly provided in the applicable third party terms and conditions, Hyrde makes no warranties of any kind in relation to the connectivity services.
- 22.2. The Customer's use of the connectivity services is subject to the relevant terms and conditions of the third party connectivity provider, as included below:
- [INCLUDE DEEP LINK TO SIGFOX TERMS AND CONDITIONS];
  - [INCLUDE DEEP LINK TO KPN LORA TERMS AND CONDITIONS];
  - [INCLUDE DEEP LINK TO VODAFONE / T-MOBILE TERMS AND CONDITIONS].
- 22.3. The Customer shall indemnify Hyrde and hold Hyrde harmless from and against all third party claims, damages, costs and expenses arising from or in connection with Customer's use of the connectivity services.
- 22.4. The Customer undertakes to use the connectivity services exclusively for the purposes permitted under the Agreement, which expressly means that the Customer must not use more data (e.g. collection, transmission, processing or storage capacity) than reasonably necessary for the intended and normal use of the connected Products and/or Services. The Customer shall reimburse any costs and expenses incurred by Hyrde due to excessive use of the connectivity services by the Customer, as a result of which the limits of the underlying connectivity subscription are exceeded.

#### **23. Customer's obligations**

- 23.1. The Customer shall, where applicable:



- a. provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by Hyrde and/or agreed with the Customer in advance, for the purposes of the Services;
  - b. provide such information as Hyrde may reasonably request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner, and ensure that it is accurate in all material respects;
  - c. inform Hyrde of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises; and
  - d. comply with all its obligations set forth in the Order.
- 23.2. Either Party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a change order has been signed by each of the Parties. A change order shall be a document setting out the proposed changes and the effect that those changes will have on:
- a. the Services;
  - b. Hyrde's existing charges;
  - c. the timetable of the Services; and
  - d. any of the terms of this Agreement.
- 23.3. If Hyrde wishes to make a change to the Services it shall provide a draft change order to the Client.
- 23.4. If the Client wishes to make a change to the Services:
- a. it shall notify Hyrde and provide as much detail as Hyrde reasonably requires of the proposed changes, including the timing of the proposed changes; and
  - b. Hyrde shall, as soon as reasonably practicable after receiving the information at clause 24.4.a, provide a draft change order to the Customer.
- 23.5. If the Parties:
- a. agree to a change order, they shall sign it and that change order shall amend this Agreement; or
  - b. are unable to agree a change order, either Party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 16.
- 23.6. Hyrde may charge for the time it spends on preparing and negotiating change orders which implement changes proposed by the Customer on a time and materials basis at the prevailing daily rates.
- 23.7. If Hyrde requests a change to the scope or execution of the Services in order to comply with any applicable statutory or legal requirements, and such change does not materially affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Any costs arising to these changes will be covered by Hyrde

## **CHAPTER FOUR – SaaS Platform**

### **24. The Software-as-a-Service platform**

- 24.1. Subject to the terms of this Agreement and the User Terms (as defined below), Hyrde will provide the Customer, and its associated subsidiaries and (if applicable) holding company, with the right to access and use the software-as-a-service platform(s) supported by Hyrde (the **Platform**) during the term of the subscription (the **Subscription Term**), solely for Customer's own business purposes. Customer's rights, and the rights of its associated subsidiaries and (if applicable) holding company, are non-exclusive, non-transferable and non-sublicensable. The Customer may access and use the Platform only as permitted by the Documentation, the Agreement and the relevant terms and conditions and/or user terms of the third party platform provider (together: the **User Terms**):
- a. [INCLUDE DEEP LINK TO ECKO USER TERMS]
- 24.2. **Documentation** means all generally available end-user documents, user manuals, installation manuals, operating instructions, explanations, all functional and performance specifications



- and standards, and other media and materials relating to the operation, maintenance, use of, and access to the Platform, including those made available to the Customer by Hyrde online at [www.hyrde.io](http://www.hyrde.io) or such other web address provided by Hyrde to the Customer from time to time.
- 24.3. The Customer will purchase the amount of user subscriptions (**User Subscriptions**) as set out in the Order. Payment for the Platform will be monthly in advance based on the number of active User Subscriptions. Purchased User Subscriptions cannot be reduced during the Subscription Term. Subject to the applicable User Terms, additional User Subscriptions may be purchased.

## 25. Platform

- 25.1. Hyrde shall, during the Subscription Term, make available the Platform and Documentation to the Customer and its associated subsidiaries and (if applicable) holding company on, and subject to the applicable User Terms and the terms of this Agreement.
- 25.2. Except as expressly provided in the applicable User Terms, Hyrde makes no warranties of any kind in relation to the Platform.
- 25.3. Hyrde shall use commercially reasonable efforts to make the Platform available 24 hours a day, seven days a week, except for planned maintenance periods.
- 25.4. Hyrde undertakes that the Platform will conform to and perform substantially in accordance with the Documentation. The undertaking set out in clause 26.4 shall not apply to the extent any non-conformance which is caused by the Customer's or an authorized user's (**Authorized User**) use of the Platform contrary to Hyrde's instructions, or modification or alteration of the Platform by any party other than Hyrde or Hyrde's duly authorized contractors or agents.
- 25.5. If the Platform does not conform with the undertaking set out in clause 26.4, Hyrde will, at its discretion, use commercially reasonable efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 26.4.
- 25.6. Notwithstanding the foregoing, Hyrde:
- does not warrant that the Customer's use of the Platform will be uninterrupted or error-free;
  - does not warrant that the Platform, Documentation and/or the information obtained by the Customer through the Platform will meet the Customer's requirements; and
  - is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Platform and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## 26. Customer's obligations

- 26.1. The Customer shall comply with the relevant User Terms which apply to the Platform.
- 26.2. The Customer shall be responsible for any Authorized User's breach of the obligations set forth in the applicable User Terms.
- 26.3. The Customer shall use all reasonable endeavours to prevent any unauthorized access to, or use of, the Platform and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify Hyrde at [info@hyrde.io](mailto:info@hyrde.io).

## 27. Service and Maintenance

- 27.1. Hyrde shall use reasonable efforts to give the Customer at least 12 business hours' notice in advance of any planned maintenance that may affect availability of the Platform (**Scheduled Maintenance**). Hyrde's Service Level Agreement (**SLA**) attached as **Exhibit A** is hereby incorporated by reference.
- 27.2. Hyrde will, as part of the Platform and at no additional cost to the Customer, provide the Customer with Hyrde's standard customer support services in accordance with the SLA. Hyrde may amend the SLA in its sole and absolute discretion from time to time.
- 27.3. Customer acknowledges and agrees that Hyrde may provide updates to the Platform at its sole discretion. Customer agrees to receive updates and consents to Hyrde's delivery of such



updates automatically through the use of the Platform. The updates described in this clause are designed to improve, enhance and further develop the Platform and may take the form of bug fixes, enhanced functions, new software modules and new versions.

## **28. Customer Data and Back-up**

- 28.1. The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Nothing in this Agreement will confer on Hyrde any right of ownership or interest in the Customer Data or the Intellectual Property Rights therein.
- 28.2. Hyrde shall follow the procedures set out in its back-up policy available at [www.hyrde.io](http://www.hyrde.io) or such other website address as may be notified to the Customer from time to time, as such document may be amended by Hyrde in its sole discretion from time to time. The Customer also acknowledges that Customer may conduct its own back-up of Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Hyrde to use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest available back-up of such Customer Data maintained by Hyrde in accordance with the archiving procedure described in its back-up policy. Hyrde shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except its agents or those third parties sub-contracted by Hyrde to perform services related to Customer Data maintenance and back-up).
- 28.3. Hyrde shall, in providing access to the Platform, comply with its Privacy Policy relating to the privacy and security of the personal information it collects when the Authorized Users use the Platform. The Customer acknowledges that each Authorized User will need to accept the Privacy Policy to use the Platform.
- 28.4. If the Customer uses the Platform to process personal data from residents of the European Economic Area, Hyrde's Data Processing Agreement attached as **Exhibit B** is incorporated into this Agreement. In the event of a conflict between this Agreement and the Data Processing Agreement, the terms provided in the Data Processing Agreement will prevail.

*\*Last updated: November 2020\**

