

**Terms and Conditions for the provision of
CableGuardian Hardware,
Hosting, Analytics and Technical Support (HATS) Services, cellular communications
and associated Engineering Support Services**

These terms and conditions cover the sale of CableGuardian hardware devices and ancillaries, the provision of associated HATS services, cellular communications and engineering support.

- By **Viper Innovations Ltd**, a company registered in England and Wales with company number 6213408, and having its registered office at Unit 3A, Marine View Office Park, 45 Martingale Way, Portishead, Bristol, BS20 7AW, United Kingdom ("**Viper**")
- To **[Customer name]**, a company registered in **[PLACE]** with company number **[NUMBER]**, having its registered office at **[ADDRESS]** ("**Customer**")

1. Definitions

Authorised Users	means employees of End Customer, who the End Customer has designated to use HATS services, accessing such services via the Web Portal.
CableGuardian	means the electrical power distribution integrity monitoring device designed, manufactured and supplied by Viper
Data Protection Laws	means by the Data Protection Act 2018, the UK General Data Protection Regulation, and any reenactment or amendment thereof.
Deliverables	means the goods and/or services which may be ordered under these Terms and Conditions, including CableGuardian, HATS, cellular communications and any ancillary goods or services.
End Customer	means the ultimate customer for the Deliverables, usually Network Rail Infrastructure Limited (company no. 2904587)
HATS	means hosting, analytics and technical support services provided by Viper on a subscription basis, in support of installed CableGuardian units, including access to the Web Portals.
Personal Data	has the meaning given to it by the Data Protection Laws.
Web Portal	User interface for accessing the HATS services, online via a web browser.

2. Ordering

- 2.1 Customer shall order the Deliverables by placing a purchase order with Viper. The order shall become binding upon Viper's issuance of an Order Acknowledgement to Customer.
- 2.2 These Terms and Conditions apply exclusively to the supply of Deliverables by Viper to Customer, to the exclusion of any other terms and conditions (including but not limited to any attached or referred to by any purchase order, order acknowledgment, invoice or other document issued by either party).

3. Pricing and Payment

- 3.1 Prices for CableGuardian and HATS services are as set out in Schedule 3. They remain valid until the date given in that Schedule, unless withdrawn earlier by notice from Viper to Customer.
- 3.2 Viper shall invoice Customer:
 - a. for goods, either
 - i. upon their delivery in accordance with clause 4.1 below; or
 - ii. if Customer has requested that Viper deliver the goods to its own stores, when the goods have been separated from Viper's own stocks and marked as intended for the customer.
 - b. for engineering services, upon their completion, or if a different payment schedule is detailed in the quotation, in accordance with that schedule, or as expressly agreed between the parties in the relevant purchase order and order acknowledgment.
 - c. for HATS services, at the beginning of the subscription period detailed in the purchase order and order acknowledgment.
- 3.3 Invoices shall clearly state any VAT or other taxes as a separate amount and include Viper's VAT registration number.
- 3.4 Customer shall pay all invoices within 30 days of invoice date. Interest on any overdue payments may be charged at an annual rate of 3% above the Bank of England base rate.
- 3.5 Any amount that Customer owes to Viper under these Terms and Conditions or otherwise, whether now or at any time in the future, whether it is liquidated or not, may be set off from any amount due to Customer from Viper under this Agreement or otherwise.
- 3.6 In the event of non-payment of a valid invoice for a licence to use HATS services, or cellular communication services within the period referred to in clause 3.4, Viper shall additionally be entitled to suspend access to the same, if, 10 days after informing

Customer that it is in default of its payment obligations, that default remains unremedied.

4. Delivery; Risk; Title

- 4.1 Delivery and transfer of risk in goods shall occur at the point of delivery specified in the shipping term (Incoterms 2020) stated in the Order Acknowledgement.
- 4.2 Title to Deliverables shall transfer to Customer upon receipt of full payment therefor.

5. Engineering Support Services

- 5.1 Upon receipt of a mutually agreed purchase order, Viper shall provide the Customer with personnel to deliver the agreed scope of work and shall ensure that such personnel have the necessary skills, competence, and qualifications to fulfil the Order.
- 5.2 Viper shall begin performing the Service on the date stated in the purchase order or otherwise agreed in writing between the parties and shall work from commencement until the Service has been completed and Contractor's obligations under the Contract have been fulfilled and discharged.

6. HATS Licence and Authorised Users

- 6.1 Viper hereby grants a non-exclusive, non-transferable right to the End Customer to use the HATS service for the CableGuardian system to which it relates, for the duration of any subscription purchased by the End Customer, or the Customer on the End Customer's behalf.
- 6.2 HATS services are for use only by Authorised Users. Customer shall arrange for End Customer to supply Viper with a list of its employees it designates as Authorised Users, including such information as it may reasonably require (name, job title, e-mail address), to set up their accounts.
- 6.3 Customer shall procure that End Customer shall keep a list of all Authorised Users and shall notify Viper within [two] business days if any updates to any list of Authorised Users are made or required, including when Authorised Users cease to be employed or engaged by End Customer, such that they are no longer entitled to be Authorised Users. Where termination of such relationship is known in advance, the Customer shall procure that the End Customer provide such information as soon as reasonably possible prior to such termination of that relationship, together with the date such person shall cease to be an Authorised User.
- 6.4 The Customer shall:
 - a. be liable for the acts and omissions of the Authorised Users as if they were its own;
 - b. only provide Authorised Users with access to the Services via the access method provided by Viper and shall not provide access to (or permit access by) anyone other than an Authorised User; and

- c. procure that the End Customer and each Authorised User (and each Authorised Affiliate) is aware of, and complies with, the obligations and restrictions imposed on the Customer under these Terms and Conditions, including all obligations and restrictions relating to confidential information.

7. Intellectual Property

- 7.1 All designs, drawings and other technical information relating to Deliverables, and the intellectual property rights therein, shall remain the property of their originator. Where such documents and information are the property of a third party (notably, but without limitation, Network Rail), the party providing them warrants that it has the necessary consent to supply them to the other party, for use with the contemplated Deliverables.
- 7.2 Viper grants to Customer and End Customer a licence to use such of its intellectual property as is necessary for the normal installation and use of Deliverables excluding HATS. This licence is transferable to any end customer for a system in which the Deliverables are incorporated and includes the right to permit other contractors of Customer or the End Customer to carry out such tasks on their behalf. It is not otherwise transferable. In respect of goods, the licence is perpetual; in respect of services offered on a subscription basis such as HATS, it shall last for the duration of the subscription purchased.
- 7.3 Viper hereby indemnifies Customer against any claim that the normal installation, and use of Deliverables infringes the intellectual property rights of a third party. This indemnity is subject to the Customer (a) giving Viper prompt notice upon becoming aware of a potential claim, (b) permitting Viper to handle the defence and settlement of the claim, (c) making no admission or statement detrimental to that defence or settlement, and (d) providing such support as Viper may reasonably request in respect thereof. This indemnity does not extend to claims where the alleged infringement arises from the use of Deliverables other than in accordance with these Terms and Conditions, or in combination with any other products or services not supplied by Viper. Viper's liability under this clause 7.3 shall be satisfied if it obtains for Customer a licence to use the infringed intellectual property rights, or provides non-infringing replacement Deliverables.

8. Data protection

- 8.1 The End Customer is required to provide Viper with limited Personal Data (name, e-mail address) of Authorised Users, for the purposes of setting up their access to the HATS services.
- 8.2 End Customer is the data controller, and Viper is a data processor, in respect of that Personal Data.
- 8.3 The parties shall comply with, and the Customer shall procure that the End Customer complies with, Data Protection Legislation in respect of that Personal Data.

8.4 Viper processes that Personal Data on the basis that it is necessary for the performance of its obligations under the contract formed by these Terms and Conditions.

9. Warranties

9.1 Warranties for CableGuardian and other hardware

Viper warrants that CableGuardian and hardware Deliverables shall conform to and function in accordance with their specification for a period of 12 months from installation, or 24 months from delivery to the Customer, whichever expires first.

9.2 Warranties for HATS

Viper does not represent or warrant that HATS services shall be available without interruption or free from error.

The Customer recognises that the Services, by their nature, may from time to time be adversely affected by physical features, atmospheric conditions and other causes of interference and may fail and require maintenance without notice. The Customer acknowledges that the performance of both CableGuardian & HATS is reliant upon cellular services provided by third parties and as such Viper cannot warrant uninterrupted performance due to unexpected cellular outages or planned or unplanned maintenance events.

9.3 No warranties apply to Deliverables other than those detailed in clauses 9.1 and 9.2. All implied warranties (including but not limited to warranties of satisfactory quality and fitness for a particular purpose) are excluded.

9.4 Customer acknowledges that CableGuardian and associated HATS services are intended to facilitate identification and location of faults in railway electrical systems, and that they do not prevent faults developing. Customer agrees that Viper has no liability to Customer or to any end-user for any loss or damage arising from such faults, and that this exclusion is reasonable in the circumstances.

10. Liability

10.1 The parties' liability under or in connection with these Terms and Conditions (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation), is limited to the value of the order under which the event giving rise to the liability occurred. This limit is per event and in the aggregate.

10.2 Notwithstanding any other provision of these Terms and Conditions, neither party shall have any liability to the other party for any indirect or consequential loss, howsoever occasioned, arising from its performance of, or failure to perform, any of its obligations hereunder.

10.3 Notwithstanding any other provision of these Terms and Conditions, neither party shall have any liability to the other party whether arising from breach of contract,

negligence, or other breach, act or omission, for any loss of profit or revenue, loss of opportunity, loss of contracts, loss of savings, or other purely economic loss, whether direct, indirect or consequential, howsoever occasioned, arising from its performance of, or failure to perform, any of its obligations hereunder.

- 10.4 Notwithstanding any other provision of these Terms and Conditions, the liability of the parties shall not be limited in any way in respect of:
- a. death or personal injury, fraud or fraudulent misrepresentation, and any other losses which by law, cannot be excluded or limited; or
 - b. any liability arising under clauses 7.3 (Infringement of third-party intellectual property), 11.1 (Confidentiality), or 11.8 (Compliance).

11. General

11.1 Confidentiality

Each party agrees that it will keep confidential and will not (whether directly or indirectly) disclose, use, copy or modify any confidential information belonging to the other. In this clause, 'confidential information' means all information of a confidential nature that a party has or acquires (whether directly or indirectly) including the other party's know-how, trade secrets, plans, developments, financial, commercial, technical, tactical, strategic, marketing, operations, customer or product information, personnel information, any information agreed to be or marked as confidential, any other information a party knows, or could be reasonably expected to know, is confidential and any other such information related to or concerning a party's business.

11.2 Entire Agreement

These Terms and Conditions are the entire agreement between the parties. They supersede any previous or other agreement in respect of their subject matter, whether written or oral.

11.3 Variation

No variation of these Terms and Conditions shall be valid or effective unless it is in writing and is duly signed or executed by each party.

11.4 Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

11.5 Severance

If any part of these Terms and Conditions is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

11.6 Force Majeure

Neither party shall have any liability under or be deemed to be in breach of these Terms and Conditions for any delays or failures in performance of its obligations hereunder which result from any event beyond the reasonable control of that party. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than 2 (two) months, and its resolution is not reasonably foreseeable, the party not affected may terminate this Agreement by written notice to the other party.

11.7 Third-Party Rights

No one other than Viper or Customer, their successors and permitted assignees, shall have any right to enforce any of its provisions.

11.8 Compliance

The parties warrant that they comply with all applicable law, notably but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015, and shall continue to do so for during the currency of the contract which is subject to these terms and conditions.

11.9 Applicable Law and Jurisdiction

These Terms and Conditions are governed by the law of England and Wales. The courts thereof have exclusive jurisdiction to resolve any disputes or claims arising out of or in connection with their subject matter (including non-contractual disputes or claims).

Signed on behalf of
Viper Innovations Ltd

Signed on behalf of
[Customer name]

(Signature)

(Signature)

(Printed name)

(Printed name)

(Position)

(Position)

(Date)

(Date)

SCHEDULE 1

CableGuardian Specification

[Insert current version of 5796-136830 CG Datasheet]

SCHEDULE 2

Hosting, Analytics and Technical Support (HATS) Service Description

In return for the payment of Hosting, Analytics and Technical Support charges, Viper Innovations shall use reasonable endeavours to:

1. Provide Network Rail staff, and by agreement their Affiliates, access to the web portal for the relevant Signalling Power System (SPS) being monitored by CableGuardian, with the appropriate Tier level functionality.
2. Manage the issuing of passwords to Network Rail staff and their Affiliates for access to the web portal. Customers and Affiliates must have an Account and a password to use the Services. Customers and Affiliates are responsible for the accuracy of the information it provides to create the Account, the security of its passwords for the Account, and for any use of its Account. If Customers or their Affiliates become aware of any unauthorised use of Customer's password or Account, it will notify Viper Innovations so that appropriate action can be taken.
3. Ensure that the facilities used by Viper Innovations to store data at all times use appropriate and sufficient security measures that meet industry standards.
4. Implement and maintain security measures, systems, and procedures to ensure the security and confidentiality of each application and all associated data, protect against anticipated and actual threats or hazards to the security, privacy or integrity of each application and all associated data.
5. Maintain web portal compatibility with Microsoft Windows, Android and iOS platforms.
6. Ensure that data transfer between the CableGuardian units and the Viper Innovations Cloud Server is operational.
7. Acknowledge technical support enquiries on a next working day basis and provide solutions wherever practicable. Inclusive technical support is limited to enquiries related to the correct operation and interpretation of results from the CableGuardian portal. Technical support requiring complex analysis of data not available in the portal can be provided as a specialist consultancy service, this is not included as standard in the HATS commercial proposal.
8. Make commercially reasonable updates to the Services for all its customers from time to time, including by adding new applications, tools, features, functionality, or performance to the Services or providing new versions, updates, upgrades, patches, fixes, successor or replacement services to the existing Services.

SCHEDULE 3

Pricing

Prices for the supply of CableGuardian and HATS services are as detailed in this Schedule herein. These prices are for supply within the UK only, and are exclusive of VAT.

They are valid until [date]. Viper reserves the right to amend them for any supply from that date onwards.