



## BASE SAAS TERMS OF SERVICE

These Base SaaS Terms of Service are by and between Argus Control Systems Ltd. (“**Argus**”) and the individual user or legal identity identified in the applicable Order (the “**Customer**”). As Argus provides a subscription Service to which Customer intends to subscribe, this Agreement establishes the business relationship and allocation of responsibilities regarding the Service. Customer agrees that these Terms govern the Customer’s use of the Service and the Customer agrees to be bound by, and fully comply with, the Terms.

### 1. **Provision of Service.**

**1.1. Argus Obligations.** During the Term, Argus shall make the Service available to Customer in accordance with the Documentation and pursuant to the terms of this Agreement.

**1.2. Customer Obligations.** Customer may enable access to the Service for use only by Authorised Parties solely for the internal business purposes of Customer and its Affiliates in accordance with the Documentation and not for the benefit of any third parties. Customer is responsible for all Customer Affiliate and Authorised Party use of the Service and compliance with this Agreement. Customer shall: (i) have sole responsibility for the accuracy, quality, and legality of all information submitted to Argus, including, but not limited to, Customer Data; and (ii) use reasonable endeavours to prevent unauthorised access to, or use of, the Service, and notify Argus promptly of any such unauthorised access or use. Customer shall not: (a) use the Service in violation of Laws; (b) in connection with use of the Service, send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (c) to the best of Customer’s knowledge, send or store Malicious Code in connection with use of the Service; (d) interfere with or disrupt performance of the Service or the data contained therein; or (e) attempt to gain access to the Service or its related systems or networks in a manner not set forth in the Documentation.

### 2. **Fees and Payment.** Unless otherwise agreed to in writing by Argus:

**2.1** Customer shall make payment to Argus in accordance with the payment terms as defined in the Order.

**2.2** If the Order Form does not speak to payment terms, and the matter of payment terms has not been agreed to otherwise in writing by Argus, payment shall be made by Customer to Argus prior to the delivery of the Service.

**2.3** Argus shall have a right of action against Customer for the price of the Service whenever the payment of the price becomes due, whether or not Service has been received by Customer.

**2.4** In addition to any other rights of Argus, interest is payable on all overdue accounts at the rate of 1.5% per month, or 18% per year.

**2.5** Where Customer defaults under these Terms or any contract with Argus in respect of payment on the due date of any sum due to Argus, Argus, without liability, may immediately suspend or terminate the Service, without liability to Customer, until such amounts are paid in full, including any warranty obligations, but without prejudice to any right which Argus may have against Customer in respect of Customer’s default.

**2.6** Argus may, before the acceptance of an Order, and from time to time thereafter, request that Customer furnish reasonable evidence that financial arrangements have been made to fulfill Customer’s obligations under these Terms. Where such a request is made, Customer shall provide the evidence, failing which Argus may, at its option, refuse or suspend the Services.



**2.7 Payment Non-cancellable & Non-refundable.** Except as specifically set forth to the contrary under Section 6.2 (Warranty Remedies), Section 7 (Indemnifications), and Section 9.3 (Effect of Termination), all payment obligations under any and all Order Forms are non-cancellable and all payments made are non-refundable.

**2.8 Taxes.** Subscription Fees and all other fees invoiced pursuant to this Agreement are payable in full and do not include, and may not be reduced to account for any taxes, which may include local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes (collectively defined as "**Taxes**"). Customer is responsible for paying all Taxes imposed on the Service and any other services provided under this Agreement. If Argus has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be computed based on Customer's address shown on the Order Form, and invoiced to and paid by Customer, unless Customer provides Argus with a valid tax exemption certificate authorised by the appropriate taxing authority.

### **3. Proprietary Rights.**

**3.1 Ownership and Reservation of Rights to Argus Intellectual Property.** Argus and its licensors own all rights, title and interest in and to the Service, Documentation, and other Argus Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, Argus reserves all rights, title and interest in and to the Service, and Documentation, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**3.2 Grant of Rights.** Argus hereby grants Customer (for itself and those of Customer's Affiliates and Authorised Parties for whom Customer enables access to the Service) a non-exclusive, non-transferable, right to use the Service and Documentation, solely for the internal business purposes of Customer and its Affiliates and solely during the Term, subject to the terms and conditions of this Agreement within the scope of use defined in the relevant Order Form. The Service is provided in English only.

**3.3 Restrictions.** Customer shall not: (i) modify or copy the Service or Documentation or create any derivative works based on the Service or Documentation; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Service or Documentation available to any third party, other than to Authorised Parties as permitted herein; (iii) reverse engineer or decompile any portion of the Service or Documentation, including but not limited to, any software utilised by Argus in the provision of the Service and Documentation, except to the extent required by Law; (iv) access the Service or Documentation in order to build any commercially available product or service, except as otherwise provided in an applicable Order Form; or (v) modify, copy or create derivative works of any features, functions, integrations, interfaces or graphics of the Service or Documentation. Notwithstanding the above, Customer may make a reasonable number of copies of the Documentation for internal business purposes only.

**3.4 Ownership of Customer Data.** As between Argus and Customer, Customer owns the electronic data or information which is submitted by Customer or Authorised Parties to the Service, which may include Personal Data ("**Customer Data**").

**3.5 Customer Input.** Argus shall have a royalty-free, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into its services any Customer Input. Argus shall have no obligation to make Customer Input an Improvement. Customer shall have no obligation to provide Customer Input.

### **4. Confidentiality.**

**4.1 Confidentiality.** A party shall not disclose or use any Confidential Information of the other party except: (i) to those of its Affiliates, officers, directors, agents, employees, contractors, consultants and financial and legal



advisors who have a need to know such Confidential Information as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement; or (ii) with the other party's prior written permission.

**4.2 Protection.** Each party agrees to protect the Confidential Information of the other party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.

**4.3 Compelled Disclosure.** A disclosure by one party of Confidential Information of the other party to the extent required by Law shall not be considered a breach of this Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure. Subject to the foregoing, in the event of any request by a government agency or law enforcement authority for access to Customer Data, Argus will seek to redirect the inquiry to Customer. In all such cases, Argus will take all reasonable measures to protect the Customer Data and to inform Customer of such demand.

**4.4 Remedies.** The parties acknowledge and agree that due to the unique nature of each party's Confidential Information, damages alone would not be an adequate remedy for breach of any disclosure or use (or threatened disclosure or use) of a party's Confidential Information. Accordingly, without prejudice to any other rights and remedies it may have, either party shall be entitled to seek equitable relief in any competent court or jurisdiction (including without limitation injunctive relief) concerning any threatened or actual disclosure or use of that party's Confidential Information in breach of the terms of this Agreement.

**4.5 Exclusions.** Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (iii) was independently developed by a party without breach of any obligation owed to the other party; or (iv) is received from a third party without breach of any obligation owed to the other party. Customer Data shall not be subject to the exclusions set forth in this Section.

## **5. Data.**

**5.1 Use of Data.** Customer agrees that data collected from the Service or the usage thereof, including Customer Data, may be compiled and analyzed by Argus on an aggregated basis ("**Aggregated Data**"), and that such Aggregated Data may be used by Argus for any lawful purpose including, without limitation, creating statistics, reports, databases, tools, methodologies, compilations or other versions of such information. Argus may disclose Aggregated Data to others, including its affiliates, customers, and business partners, and may also retain it for future use. Customer agrees that all Aggregated Data is and will remain the exclusive property of Argus.

**5.2 Privacy Policy.** Customer Data will be used, collected, stored and disclosed in accordance with applicable privacy laws as well as Argus' privacy policy, as may be amended by Argus from time to time, the current version of which is available at [www.arguscontrols.com/privacy-policy](http://www.arguscontrols.com/privacy-policy) .

**5.3 Security Breach.** If either party becomes aware of a Security Breach, such party must promptly, but in no event later than forty-eight (48) hours (or any shorter period as may be required by Law), notify the other party, unless legally prohibited from doing so; provided, however, that Customer is not required to notify Argus in any case where Customer reasonably determines that the Security Breach presents no threat to the Service. Additionally, each party will reasonably assist the other party in mitigating any potential damage.

## **6. Warranties & Disclaimers.**

**6.1 Warranties.** Each party warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all Laws. Argus warrants that during the Term: (i) the Service shall perform materially in accordance with the Documentation; (ii) the functionality of the Service will not



be materially decreased during the Term; and (iii) to the best of Argus's knowledge, the Service does not contain any Malicious Code.

**6.2 Warranty Remedies.** In the event of a breach of the warranty set forth in Section 6.1(i), (ii) or (iii), (a) Argus shall correct the non-conforming Service at no additional charge to Customer, or (b) in the event Argus is unable to correct such deficiencies after good-faith efforts, Argus shall refund Customer amounts paid that are attributable to the defective Service from the date Argus received such notice. Customer shall use its reasonable endeavours to notify Argus in writing within thirty (30) days of identifying a deficiency, but Customer's failure to notify Argus within such thirty (30) day period shall not affect Customer's right to receive warranty remedies unless Argus is somehow unable to, or impaired in its ability to, correct the deficiency due to Customer's failure to notify Argus within the thirty (30) day period. Notice of breaches of the warranty in Section 6.1(i) shall be made through Argus's then-current error reporting system; notices of breaches of any other warranty shall be made in writing to Argus in accordance with the Notice provisions of this Agreement. The remedies set forth in this sub-Section shall be Customer's sole remedy and Argus's sole liability for breach of these warranties unless the breach of warranty constitutes a material breach of this Agreement and Customer elects to terminate the Agreement in accordance with Section 9.2 (Termination).

**6.3 Disclaimer.** Except as expressly provided herein and to the maximum extent permitted by applicable Law, Argus makes no warranties of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose with respect to the Service and/or related Documentation. Argus does not warrant that the Service will be error free or uninterrupted. The limited warranties provided herein are the sole and exclusive warranties provided to Customer in connection with the provision of the Service.

## **7. Indemnifications.**

**7.1 Argus Indemnity.** Argus shall defend Customer, at Argus's expense, from any Claim against Customer by a third party alleging that the use of the Service as contemplated under this Agreement infringes or misappropriates any third party's Intellectual Property Rights and Argus shall indemnify and hold Customer harmless against any Losses relating to such Claim.

**7.2 Customer Indemnity.** Customer shall defend Argus, at Customer's expense, from any Claim against Argus by a third party alleging that: (i) the use of Customer Data, and/or (ii) data or content submitted by Customer, its Affiliates and/or Authorised Parties pursuant to the use of the Service as contemplated under this Agreement, infringes or misappropriates such third party's Intellectual Property Rights and Customer shall indemnify and hold Argus harmless against any Loss relating to such Claim.

**7.3 Conditions.** The indemnitor's obligations in Section 7.1 and 7.2 are conditioned on the indemnitee: (i) promptly giving written notice of the Claim to the indemnitor (although a delay of notice will not relieve the indemnitor of its obligations under this Section except to the extent that the indemnitor is prejudiced by such delay); (ii) giving the indemnitor sole control of the defence and settlement of the Claim (although the indemnitor may not settle any Claim unless it unconditionally releases the indemnitee of all liability); and (iii) providing to the indemnitor, at the indemnitor's cost, all reasonable assistance.

**7.4 Exceptions.** Argus shall have no liability for Claims or Losses to the extent arising from: (i) modification of the Service by anyone other than Argus; (ii) use of the Service in a manner inconsistent with this Agreement or the Documentation; or (iii) use of the Service in combination with any other product or service not provided by Argus.

**7.5 Continued Use of the Service.** If Customer is legally prevented from using the Service or Argus reasonably believes it will be legally prevented, Argus shall have the right, at its sole option, to obtain for Customer the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is reasonably available to Argus, then the applicable Service may be terminated



at either party's option and Argus's sole liability, in addition to the indemnification obligations herein, shall be to refund any prepaid fees for the applicable Service that was to be provided after the effective date of termination.

**7.6 Exclusive Remedy.** This Section 7 states each indemnitee's exclusive remedies and the indemnitor's sole obligations for all third party Claims related to the subject matter of this Section.

## **8. Limitation of Liability.**

**8.1 Limitation of Liability.** To the maximum extent permitted by Law and except with respect to: (i) death or personal injury caused by negligence; (ii) fraud, fraudulent misrepresentation or willful misconduct; (iii) either party's indemnification obligations; or (iv) Customer's payment obligations; in no event shall either party's (or its respective Affiliates, which in the case of Argus includes any third party licensors) total aggregate liability for any and all Claims (individually and in the aggregate) arising out of or relating to this Agreement, whether in contract, tort (including negligence) or otherwise, exceed the total Subscription Fees paid or payable by Customer in the Contract Year for the Service from which the Claim arose ("**General Liability Cap**"); except for either party's breach of its confidentiality, security, privacy or data protection obligations under this Agreement, where such liability shall not exceed two (2) times the total Subscription Fees paid or payable by the Customer in the Contract Year for the Service from which the Claim arose ("**Enhanced Liability Cap**"). For the purposes of this Section 8.1, "**Contract Year**" means the twelve-month period commencing on the Effective Date set out in the Order Form and each year thereafter commencing on the anniversary of the Effective Date throughout the Term.

**8.2 Exclusion of Damages.** To the maximum extent permitted by Law amounts to be paid by either party pursuant to a court award or settlement, as well as the defence costs under the indemnification obligations in Section 7, in no event shall either party have any liability to the other party for: (i) any indirect, special, incidental, exemplary, punitive, or consequential losses or damages, however caused; or (ii) whether the same are suffered directly or indirectly: (a) loss of profits, (b) loss of anticipated savings; (c) loss of business opportunity; or (d) loss of goodwill, whether in contract, tort (including negligence) or otherwise, arising out of, or in any way connected with the Service, including but not limited to the use or inability to use the Service, any interruption, inaccuracy, error or omission, even if the other party or its Affiliates had been previously advised of the possibility of such loss or damages. Customer will not assert that its payment obligations as set forth in an Order Form are excluded as Argus's lost profits. Nothing in this Agreement limits a party's liability to the other for losses resulting from its fraud, fraudulent misrepresentation, willful misconduct, or in respect of death or personal injury resulting from its negligence.

## **9. Term & Termination.**

**9.1 Term of Agreement.** The Term commences on the Effective Date and continues until the stated term in all Order Forms has expired or has otherwise been terminated, unless otherwise extended pursuant to the written agreement of the parties (the "**Term**"). Subscriptions to the Service commence on the date, and are for a period, as set forth in the applicable Order Form.

**9.2 Termination.** Either party may terminate this Agreement: (i) after the initial Contract Year, upon thirty (30) days prior written notice to the other party; or (ii) immediately in the event the other party ceases business, is unable to pay its debts as they fall due, becomes insolvent or bankrupt or makes an arrangement for, or composition with, its creditors or makes an application to a court for protection from its creditors (otherwise than voluntarily for the purposes of a bona fide amalgamation or reconstruction) or if a liquidator, receiver, examiner, administrator or administrative receiver is appointed over any part of that party's business or takes steps in preparation of any of the above events or if anything analogous occurs in relation to that party under the Laws of any jurisdiction. In the event of a termination pursuant to Section 9.2(i), the termination shall be effective on the first day of the month following the thirty (30) day notice.

**9.3 Effect of Termination.** Upon any termination by Customer pursuant to Section 9.2, (i) Argus shall refund Customer a proportionate amount of any prepaid fees for the affected Service; and (ii) Customer shall pay any fees accrued or due and payable to Argus prior to the effective date of termination. In the event of any termination



by Argus pursuant to Section 9.2 such termination shall not relieve Customer of the obligation to pay any fees accrued, due and payable to Argus prior to the effective date of termination. In the event the Agreement is terminated, all Order Forms shall also be terminated simultaneously. Upon any expiration or termination of this Agreement, Customer shall, as of the date of such expiration or termination, immediately cease accessing and otherwise utilizing the Service (except as permitted under Section 9.5 (Retrieval of Customer Data) and Argus Confidential Information.

**9.4 Retrieval of Customer Data.** Upon written request by Customer made prior to or upon any expiration or termination of this Agreement, Argus will make Customer Data available to Customer through the Service on a limited basis solely for purposes of Customer retrieving Customer Data for a period of up to six (6) months after the expiry or termination of this Agreement. After such six (6) month period, Argus will have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data by deletion of Customer's Tenant; provided, however, that Argus will not be required to remove copies of the Customer Data from its backup media and servers until such time as the backup copies are scheduled to be deleted, provided further that in all cases Argus will continue to protect the Customer Data in accordance with this Agreement. Customer Data will be made available in .CSV format and may be subject to an additional retrieval fee of \$200 per hour (with a minimum of 1 hour charged). The foregoing deletion obligation will be subject to any retention obligations imposed on Argus by Law. Additionally, during the Term, Customer may extract Customer Data using Argus's standard web services.

**9.5 Surviving Provisions.** The following provisions of this Agreement shall not survive and will have no further force or effect following any termination or expiration of this Agreement: (i) sub-Section (i) of Section 1.1 (Argus Obligations); (ii) Section 3.2 (Grant of Rights); and (iii) those provisions granting Customer access to services referenced in any applicable Order Form(s). All other provisions of this Agreement shall survive any termination or expiration of this Agreement.

## **10. General Provisions.**

**10.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.

**10.2 Customer Identification.** Either party may use the other party's or the other party's Affiliates' name and logo in advertising, marketing, or publicity efforts (including announcements or press releases) in a manner mutually agreed between the parties in connection with Customer's selection and use of the Argus Service. The parties further agree that Argus may use Customer's name and logo in customer lists, on earnings calls and releases and on Argus's website, provided that such use is limited to identification of Customer as an entity which receives services from Argus. Upon Customer's written request to Argus, Argus will remove Customer's name and logo from Argus's public website.

**10.3 Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; or (ii) the third business day after being sent by pre-paid recorded post. Notices to Argus shall be sent to the address shown in the Order Form addressed to the attention of your sales representative with a copy by email sent to [support@argusfocus.com](mailto:support@argusfocus.com). Notices to Customer shall be sent to the address shown in the Order Form addressed to Customer's signatory of this Agreement. Each party may modify its recipient of notices by providing notice pursuant to this Agreement.

**10.4 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**10.5 Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other industrial

action (other than those involving Argus or Customer employees, respectively), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service or telecommunications provider (a “**Force Majeure Event**”), but in each case, only if and to the extent that the non-performing party is without fault in causing such failure or delay, and the failure or delay could not have been prevented by reasonable precautions and measures and cannot reasonably be circumvented by the non-conforming party through the use of alternate sources, workaround plans, disaster recovery, business continuity measures or other means. The party affected by the Force Majeure Event shall: (i) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and (ii) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**10.6 Assignment.** Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Argus (which consent shall not be unreasonably withheld or delayed).

**10.7 Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed exclusively by, and construed in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein and the parties irrevocably submit to the exclusive jurisdiction of the courts in the Province of British Columbia in the City of Vancouver, British Columbia, Canada.

**10.8 Miscellaneous.**

- (a) **Entire Agreement.** This Agreement, including all exhibits and attachments hereto and all Order Forms, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and extinguishes all prior and contemporaneous agreements, promises, assurances, proposals, warranties, representations or undertakings, whether written or oral, concerning or relating to its subject matter. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement.
- (b) **Conflict.** In the event of a conflict, the provisions of an Order Form shall take precedence over provisions of the body of this Agreement and over any other exhibit or attachment thereto.
- (c) **Variation.** No modification, amendment, variation or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, variation or waiver is to be asserted.
- (d) **Severance.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, contrary to law or unenforceable, the provision shall be modified by the court to the extent necessary and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- (e) **Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one binding legal instrument. The parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

**11. Definitions and Interpretation.**

**11.1 Definitions.** The definitions and rules of interpretation in this Section shall apply to the Agreement.



**“Affiliate”** of a party shall mean and include any entity or association controlled by, controlling or under common control with such party and for the purposes of this definition, “control” shall mean: (i) the ownership of more than fifty percent (50%) of the voting shares of the subject entity or association; (ii) the right or power, directly or indirectly, to elect or remove directors; or (iii) the right or power to control management.

**“Aggregated Data”** has the meaning set forth in Section 5.1.

**“Agreement”** means this Base SaaS Terms of Service, any exhibits, addenda or attachments hereto, and any fully executed Order Form.

**“Authorised Parties”** means Customer’s or its authorised Affiliate’s Employees and third-party providers authorised by Customer to access Customer’s Tenants and/or to receive Customer Data: (i) in writing; (ii) through the Service’s security designation; or (iii) by system integration or other data exchange process.

**“Claim”** means any claim, demand, suit or other legal proceeding made or brought against a party to this Agreement.

**“Confidential Information”** means: (i) any software utilised by Argus in the provision of the Service and its respective source code; (ii) Customer Data; (iii) each party’s business or technical information, including but not limited to the Documentation, training materials, any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing party as “confidential” or “proprietary” or the receiving party knows or should reasonably know is confidential or proprietary; and (iv) the terms, conditions and pricing of this Agreement (but not its existence or parties).

**“Customer Data”** has the meaning set forth in Section 3.4.

**“Customer Input”** means suggestions, enhancement requests, recommendations or other feedback provided by Customer, its Employees or Authorised Parties relating to the operation or functionality of the Service.

**“Documentation”** means Argus’s quick start guide, instructional videos and online training materials made available to Customer in connection with the use of the Service, which may be updated by Argus from time to time.

**“Employee”** means employees, consultants, contingent workers, independent contractors, and retirees of Customer and its Affiliates whose business record(s) are or may be managed by the Service and for which a subscription to the Service has been purchased pursuant to an Order Form.

**“Improvements”** means all improvements, updates, enhancements, error corrections, bug fixes, release notes, upgrades and changes to the Service and Documentation, as developed by Argus and made generally available for use without a separate charge to customers.

**“Intellectual Property Rights”** means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents, database rights and other proprietary rights issued, honoured or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

**“Law”** means any local, state, national and/or foreign law, treaties, and/or regulations applicable to a respective party.

**“Loss”** means any damages or costs finally awarded or entered into in settlement (including, without limitation, reasonable legal fees).



**“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.

**“Order Form”** means the separate ordering documents under which Customer subscribes to the Service or other services pursuant to this Agreement that have been fully executed by the parties.

**“Security Breach”** means: (i) any actual or reasonably suspected unauthorized use of, loss of, access to or disclosure of, Customer Data; provided that an incidental disclosure of Customer Data to an Authorized Party or Argus, or incidental access to Customer Data by an Authorized Party or Argus, where no reasonable suspicion exists that such disclosure or access involves theft, or is fraudulent, criminal or malicious in nature, shall not be considered a “Security Breach” for purposes of this definition, unless such incidental disclosure or incidental access triggers a notification obligation under any Law; and (ii) any security breach (or substantially similar term) as defined by applicable Law affecting Customer Data.

**“Service”** means Argus’s software-as-a-service applications and Improvements as described in the Documentation and subscribed to under an Order Form.

**“Subscription Fee”** means all amounts invoiced and payable by Customer for the Service.

**“Tenant”** means a unique instance of the Service, with a separate set of Customer Data held by Argus in a logically separated database (i.e., a database segregated through password-controlled access).

**“Term”** has the meaning set forth in Section 9.1.

**11.2** References to Sections and exhibits are to the Sections and exhibits of this Agreement and, as the context requires, any Order Forms forming part of this Agreement. Section, exhibit and paragraph headings shall not affect the interpretation of these this Agreement.

**11.3** A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

**11.4** A reference to writing, unless specifically stated to be otherwise, includes e-mail, and information sent by Argus to Customer in writing using Argus’s standard customer communication methods.