Cloud Compute Services

SERVICE DESCRIPTION

including Terms & Conditions

CloudCompute v4

CONTENTS

Summary

Vivio Cloud Compute Services powered by Gamma deliver a number of Infrastructure as a Service (IaaS) products, notably Compute, Storage and associated network elements such as Firewalls and Load Balancers. Together, they are designed to provide SME customers with a fully functionally public cloud-based infrastructure to meet their application requirements. In addition, the service offers an optional 'Backup as a Service' application which customers can use to back-up their cloud data.

Whist the customer remains responsible for managing their own applications, the underlying infrastructure on which it runs is now part of a managed service as described within this document.

Security

Vivio is responsible for the security of the Cloud Service and shall be solely responsible for the provision of appropriate technical expertise, knowledge and resources to correctly request the appropriate configuration of the firewall services required by the Client.

Vivio will use its reasonable endeavours to provide as secure a protection as possible but the Client acknowledges that no firewall is completely secure or proof against all external threats such as viruses, malware and other unauthorised intrusions.

Vivio and Gamma shall have no liability to the Client for any direct or indirect costs suffered by the Client in the event of any penetration of the firewall by any third party or third-party software save in cases of fraud or negligence on the part of Vivio or Gamma or an employee or sub-contractor of Vivio or Gamma.

The Client also remains responsible for the security of:

- The Operating System

- Applications

- Data in transit

- Data at rest

- Data Stores

Amazon Web Services

Vivio's Cloud Compute service powered by Gamma is deployed exclusively on Amazon Web Services (AWS), a platform that is highly reliable, scalable and a low-cost infrastructure platform in the cloud that powers hundreds of thousands of businesses in 190 countries around the world.

AWS is a secure, durable technology platform with industry-recognized certifications and audits: PCI DSS Level 1, ISO 27001, FISMA Moderate, FedRAMP, HIPAA, and SOC 1 and SOC 2 audit reports. Their services and data centres have multiple layers of operational and physical security to ensure the integrity and safety of your customer's data.

Core Product Set

In order to provide a complete functioning infrastructure, the following core product components are required to be created during the initial Client order: Compute (Virtual Servers), Storage and Networking.

Compute Function – Servers

The servers are virtual machine instances which are built including an operating system chosen by the Client. The cost of the server includes the OS which will be pre-installed and ready to go. The current list of available operating systems are: -

- Windows Server 2008, 2008 R2, 2012 and 2012 R2
- SUSE Linux Enterprise Server 12
- Red Hat Enterprise Linux 7.2
- Ubuntu Server 14.04 LTS

Note: Vivio and Gamma are not responsible for maintaining the OS and/or providing any updates or patches to the O/S.

The service provides a range of virtual servers that are differentiated in terms of processing power (CPU), memory and IO capability.

Unless specifically arranged otherwise; all Virtual machines will be deployed using 64-bit architecture.

Each server has a specific number of processors and amount of memory allocated; if the Clients requirements change, the server can simply be replaced by a more suitable alternative with a minimum amount of downtime.

Naming convention – Whilst Vivio and Gamma will use a pre-defined naming convention; the portal description and billing file will include both the product and Client defined name.

The servers are proactively monitored and are configured to automatically alarm if predefined thresholds are met. (see support section)

They are segmented as follows:

Each group can contain a number of versions, differing in Memory and CPU.

Server Category Description	Optimised Function	Notes:
CloudBurst	Bursting	Provide a baseline level of CPU performance with the ability to burst above the baseline.
CloudMem	Memory	Optimised for memory-intensive applications
CloudGen	General Purpose	A balance of compute, memory, and network resources, and it is a good choice for many applications.
CloudCom	Compute	latest generation of Compute-optimised instances, featuring the highest performing processors

Applications that can be Hosted

Almost all modern applications can be run within a virtualized environment hosted on Vivio's Cloud Compute service powered by Gamma. Exception includes some applications that require a device driver (a form of integration with the OS) and 16-bit applications that need to run in shared memory space.

The Client remains responsible for confirming that their application is suitable for migrating to a virtualised environment.

Moves, Adds and Changes

Following implementation, the following changes can be made subject to survey and additional charges:

Change Server Type

The server can be replaced by an alternative specification model based on any suitable available combination of RAM and CPU. This activity is a scheduled event, booked within a 48hr window and subject to a 15 min downtime. The end user Client user login credentials remain unchanged. Unless specifically modified at the same time, all data volumes associated with the current server will be transferred to the 'new' server.

Delete Server

Clients can delete servers (as opposed to changing models) following any minimum contract commitments.
Please note that any storage device attached to this server will be deleted unless requested to be re-attached to another available server prior to deletion. The Client should also be made aware that once deleted, the data will be lost and therefore offered the opportunity to save their data elsewhere prior to deletion. If the optional Backup as a Service (BaaS) feature is enabled on the server, this too will need to be removed before the server can be deleted.

Increase existing Storage Size (increase drives)

The Client can request an increase on storage capacity (in 100GB increments up to a maximum of 16TB) associated with the server. This is a scheduled event within a 48hr window and requires a 30-minute downtime.

Add Additional Storage Volumes (new drives)

The Client has the option to add additional storage volumes (drives) to the server. There is no downtime associated with this function.

Add a Public IP

If the server exists within a Public IP subnet, the Client can request a Public IP to be attached to the server. If the server is not in a public subnet, contact Vivio for advice.

Add/Remove Backup

The reseller can order the optional BaaS service to associate with the server and all of its associated storage volumes. The BaaS can also be removed, following confirmation that the user is aware of and has had opportunity of downloading any existing backup data.

The removal of any chargeable elements such as a servers are subject to minimum term charges as detailed in the Proposal and Order Form.

Storage

All servers will have at least 1 storage device associated against it – these are high performance Solid State Drive storage devices and are available in 100GB increments up to a maximum of 16TB. The Client can create multiple volumes within a single storage device, noting that at least 50GB will be allocated to the operating system.

Each SSD device can support an aggregate transfer rate of up to 800MB/s and an IOPS of 48,000 and up to 160 MB/s and 10,000 IOPS per volume.

The Client will be responsible for creating and managing their own file systems across the deployed volumes. These are block storage devices with each storage device linked to a single server.

Each storage device is automatically replicated in order to protect it from component failure.

Networking

The creation of each Client's server environment will include a Virtual Private Cloud (VPC) which is a logically isolated section of the cloud and provides the facility to deploy specific IP ranges, the creation of subnets, and configuration of routing tables and network gateways.

For example, Clients can have a public-facing subnet for their webservers with access to the Internet, and place their backend systems such as databases or application servers in a private- facing subnet with no direct connection to the internet for inbound access, outbound is still possible for general internet access.

Servers in a private subnet can access the Internet without exposing their private IP address by routing their traffic through a Network Address Translation (NAT) gateway in a public subnet.

In addition, Clients can choose to include a Virtual Private Network (VPN) connection between their own facilities and the VPC.

Each Client can be allocated up to 5 Public IP addresses; any additional requirements must be applied for separately.

The creation and configuration of the VPC is undertaken by Gamma on behalf of Vivio based on specific Client configuration requirements as captured by Vivio.

Note: The service uses IPv4 only.

The following elements constitute the VPC:

Firewall

The service provides a Managed Firewall with a configuration based on a rule set provided by the Client. The outcome is an individual Firewall policy that is based on Port, Protocol and Source IP address rules.

The Firewall rules are based on security groups which are applied to individual servers and can therefore be tailored to the requirements of each server and their associated applications. Each server will be assigned to a single security group.

Key Considerations:

- All servers on the same subnet will have unrestricted access to each other, an important consideration when deciding which subnet to place servers in. For example, good practice would exclude a publicly accessible web server from sharing the same subnet with a private application, database or development server.
- By default, no inbound traffic is allowed until you add inbound rules to the security group.
- The Firewall is not a web filtering Intrusion Detection (IDS) or Prevention (IPS) System. Customers that require this additional functionality must make their own provision for such functionality.
- Security groups are stateful — responses to allowed inbound traffic are allowed to flow outbound regardless of outbound rules, and vice versa

You can allow specific ports/protocols for an IP or CIDR (Classless Inter-Domain Routing).

Subnets

The creation of the Clients VPC allows for the introduction of subnets in order to isolate specific servers in a logical manner. The Client can specify the range of IP addresses for the VPC in the form of a Classless Inter-Domain Routing (CIDR) block; for example, 10.0.0.0/16

Please note:

The first four IP addresses and the last IP address in each subnet CIDR block available for you to use, and cannot be assigned to a server. For example, in a subnet with CIDR block 10.0.0.0/24, the following five IP addresses are reserved:

- 10.0.0.0: Network address.
- 10.0.0.1: Reserved by AWS for the VPC router.
- 10.0.0.2: Reserved by AWS for mapping to the Amazon-provided DNS.
- 10.0.0.3: Reserved by AWS for future use.
- 10.0.0.255: Network broadcast address. Broadcast is not supported in a VPC, therefore address is reserved.

Load Balancer

Load Balancing is optional costed feature that automatically distributes incoming application traffic across multiple servers as defined by the user requirements. It enables greater levels of fault tolerance in applications, seamlessly providing the required amount of load balancing capacity needed to distribute application traffic.

When you define a load balancer in your configuration it will be in an internet-facing only configuration.

Load Balancing supports the ability to stick user sessions to specific servers using cookies. Traffic will be routed to the same instances as the user continues to access your application, it also scales its request handling capacity in response to incoming applications.

Applications using HTTP, HTTPS (Secure HTTP), SSL (Secure TCP) and TCP protocols are supported by the Load Balancer.

Virtual Private Network (VPN)

The service provides a chargeable option to order an IPsec, VPN connection between your the VPC and the Clients network.

The Client is responsible for configuring their gateway, which is the physical device or software application on the remote side of the VPN connection. They are also responsible for implementing redundancy and failover (if required).

The following customer gateway devices are known to work with VPN connections:

Statically-routed VPN connections

- Cisco ASA 5500 Series version 8.2 (or later) software
- Cisco ISR running Cisco IOS 12.4 (or later) software
- Dell SonicWALL Next Generation Firewalls (TZ, NSA, SuperMassive Series) running SonicOS5.8 (or later)
- Juniper J-Series Service Router running JunOS 9.5 (or later) software
- Juniper SRX-Series Services Gateway running JunOS 9.5 (or later) software
- Juniper SSG running ScreenOS 6.1, or 6.2 (or later) software
- Juniper ISG running ScreenOS 6.1, or 6.2 (or later) software
- Microsoft Windows Server 2008 R2 (or later) software
- Yamaha RTX1200 router

If a VPN is required by the Client, a simple VPN form will be provided which will need to be completed with the following information:

- Tunnel Endpoint Device (Gateway)
- Tunnel Endpoint IP Address
- Networks to be tunneled

Moves Adds and Changes

Vivio will on behalf of the Client, request configuration changes to be made to any of the networking elements of the design such including, Firewall rules, Subnets, Load Balancer and VPNs.

Such configuration changes are included within the managed service charge associated with the service.

The removal of any chargeable elements such as a VPN are subject to any minimum term charges as detailed in Proposal and Order Form.

Security

Server Passwords

Usernames and Passwords created for new servers will be emailed to the Client following successful creation on AWS. This is a once only communication and these details are not stored on any Gamma systems. Clients are strongly advised to change these passwords during the first login.

Note: Gamma nor Vivio are not able to retrieve or regenerate these details and it is therefore the Client's responsibility to safeguard these details.

Service Account Root Credentials

The creation of service for each Client will automatically generate a unique username and password known as the root credentials. These details are securely stored with LastPass Enterprise Vault using AES-256 bit encryption with PBKDF2 SHA-256 and salted hashes to ensure complete security in the cloud. They are not stored on Gamma systems or used for any subsequent interaction with the customer's service. Gamma will have sole access to LastPass for any future retrieval purposes and is via a two-factor authentication, adding extra security by requiring a second login step before access.

Data Location

All Client servers, associated data and backup data (where applicable) are maintained within a single geographic region in the UK referred to as the EU (London) region. Resources and data will not be created or moved outside of this geographic region.

Please note: Within this region, there are multiple, isolated locations known as 'availability zones'. Servers are not replicated across regions unless specifically requested to do so.

Data storage devices are located within a single availability zone, whereas the backup service is located across multiple availability zones (again within the same EU (Ireland) region).Data Security

The AWS services deployed by Vivio and Gamma are supported by the robust controls in place at AWS to maintain security and data protection in the cloud. All the relevant compliance features that are available from Amazon can be found here: https://aws.amazon.com/compliance/

Backup as a Service (BaaS)

The 'Backup Service' is an optional costed feature that can be ordered during the initial provisioning process or at a later date to an existing service.

It provides Clients with a simple to use application that can back-up their Gamma Cloud SSD storage devices to another AWS logically and physically separate storage facility within the same region.

Service Features

The Client is provided with a simple console in order to setup and manage all their virtual server backups from a single console.

Specific configuration and user details can be found within the BaaS User Guide; noting that a backup software agent is required on the server.

Highlights:

- Server agents support both Windows and Linux environments
- Source-based encryption and source-based global de-duplication
  Application-consistent backups of Windows Server tools
- Support for Active Directory, DFS, Exchange, SharePoint, SQL
- VSS (Volume Shadow Copy Service) integration enables application consistent backup and recovery with file-level granularity
- WAN-optimised protocols enable efficient and secure in-cloud and cross-cloud communication
- Incremental backup, globally de-duplicated and compressed
- Automatic resumption of interrupted backups

Retention Period

Unless explicitly agreed otherwise, the following standard retention policy is applied:

- Quarterly Backup – 1-year retention
- 7 days of backups (daily)
- 5 weeks of backups (weekly)
- 3 months (monthly)
- 3 quarterly backups (quarterly)

Security

The following security features are associated with this service and can be implemented by the Client:

- Source-based AES-256 encryption - Data is encrypted before it is sent to the cloud and remains encrypted as it is stored.
- SHA-1 Data Fingerprinting - Ensures data integrity as it travels between locations, prevents man-in-the-middle attacks and transfer errors.
- Private Encryption Key Management - Manage your own encryption keys or use personal passphrases per user to prevent privileged admins from accessing data.
- In-Transit TLS Encryption - In addition to data encryption, all WAN transfers use Transport Level Security (TLS) protocol over the WAN, preventing unauthorized interception of data transfers.
- Granular Event Logging - Monitor and log security events such as user access and failed logins, and integrate with SIEM systems via Syslog for 3rd party audit trail retention and reporting.
- Restricted Content Policies - Define rules based on file size, name, or type that deny or allow files to be shared externally or uploaded to your network.

Service Dashboard – Cloud View

Vivio's Cloud Compute service powered by Gamma provides an in-life service view of the customer's servers and attached storage devices via a 'Cloud View' application.

Access to Cloud View is provided as part of the provisioning process with access details and passwords provided as part of the credential pack emailed to the Client following service creation.

Key elements of Cloud View include:

- Monitors CPU, RAM and storage usage
- Proactive alarm monitoring with email, text or call out available
- Alarm escalation logic defined by reseller
- Historical and trend reporting

Support

Where an existing support contract is in place with the Client or is entered into at the same time as the order for Cloud Compute services, Vivio will work with the Client on their behalf to fulfill the responsibilities outlined above to complete the successful implementation of the new services.

Under this same support contract Vivio will provide the agreed level of support to the Client for the duration of the Cloud Compute agreement including any additional services stipulated under that support agreement.

Service Level Agreement (SLA)

Vivio and Gamma provide a service level agreement as part of the Cloud Compute service; this SLA includes measurements for:

- Service Availability
- Fault Rectification
- Service Provisioning

Service Availability

Service Availability is defined as the ability of a Service to perform its required function over a stated period of time. It is reported as the percentage of time that a Service is actually available for use by the Client within agreed Service Hours.

Availability is calculated as:

$$\frac{\text{Total number of minutes in the measurement period} - \text{Unplanned Downtime} \times 100}{\text{Total number of minutes in the measurement period}}$$

Note: If a Service is partially available then the Unplanned Downtime shall be calculated in equal proportion i.e. if a service is 50% available then the unplanned downtime will be calculated as 50% x elapsed period of the incident.

Availability Measurement Period: 1 Calendar month.

Service Detail	Target Availability
Servers	99.95%
Storage Drives (volumes)	99.95%
Cloud Network (Firewall, Load Balancers, VPN)	99.95%
Backup Service	99.95%

Service credits will be applicable should the level of core service availability not meet the target monthly percentage, as per the table above. Service Credits applied to Monthly Service rental charges only. Service credits would need to be requested by the Client to Vivio, with evidence of services that   you feel have been impacted. Any agreed service credits would be satisfied by the issue of a credit note   to be deducted from the next scheduled payment to be made to Vivio.

Service Detail	Target Availability	Service Credit
99.95%	99.90%-99.94%	10%
99.95%	99.5% - 99.89%	15%
99.95%	<99.5%	25%

Unavailability means:

For Cloud Servers - When all of your running servers have no external connectivity.

For Cloud Storage Drives - When all of your attached volumes perform zero read write IO, with pending IO in the queue.

Please note the Service Availability and other measures with the SLA relate to the core Cloud Compute Service and does not include access or local CPE elements.

Fault Rectification

Subject to the fault processes detailed in the product Service Description, the following definitions will be applied to faults raised on the Cloud Compute Service:

Severity	Description	Time to Resolve
Priority 1	Critical Fault - Loss of service - Multiple resellers/services affected	5 Clock Hours
Priority 2	High - Loss of service - single reseller or service	7 Clock Hours
Priority 3	Medium - Disrupted service - multiple or single reseller or service	2 Working Days
Priority 4	Non-critical operational impact that does not restrict user from performing key tasks.	7 Working Days

The Service Desk is available Monday – Friday 08:30 – 17:00 (Closed UK bank holidays). Out of Hours support is excluded from this SLA as best endeavours will apply.

Note: Service credits are not applicable against Fault Rectification performance metrics.

Service Provisioning

The following performance indicators are applicable to in-life Cloud Compute Service Provision:

Severity	Description	Time to Resolve
Standard Service Request	3 Working Days	NA
Standard Change Request	3 Working Day	NA
Non-Standard Change Request	7 Working Days	NA
Emergency Change Request	6 Clock Hours	NA

Standard Service Request:

A service request that does not require modification of any existing service.

Standard Change Request:

A service request requires the modification or addition to an existing service. An example would be to increase a Client's storage capacity.

Non-Standard Change Request:

A service request which requires further technical or commercial consideration and may be declined accordingly. An example would the addition of an Amazon Web Service feature not currently supported by Vivio.

Emergency Change Request:

A request where significant impact is anticipated or immediate action to restore service is required. An example would be where a storage volume has reach capacity due to an error within the end user's application. The storage volume may need to be increased urgently to prevent the server from hanging.

Please note: Service credits are not applicable against Service Provisioning performance metrics.

Billing and Invoicing

Setup Charges

The service may include a one-off connection charge for the following elements where provisioned:

- Audit (per server - min 5 servers)
- Setup Per Server
- Network
- VPN
- BaaS Per Server
- Load Balancer
- Migration Infrastructure

Re-occurring Fixed Fee

The fixed fee consists of the monthly subscription charge where the following elements are provisioned:

- Server (e.g. CloudGen-40L-WIN)
- SSD Storage (e.g. SSD-Volume 500G)
- Monitor & Support (per server)
- Managed Firewall
- Load Balancer Management
- Data Out (200GB/Month) Fair Use Policy
- VPN
- Load Balancer
- BaaS (per 100GB increments)

Invoicing

The costs for the fixed fees plus the one-off setup charges shall be billed monthly, pro-rata if service started during the month.

There will be a minimum term for the services, details of which can be found on the Proposal and Order Form.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Act: the Telecommunications Act 1984 and any subsequent or related legislation.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.7.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions and the Specific Terms.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 15.1.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any description in any brochures, that is agreed in writing by the Customer and the Supplier.

Incentives: means any redemptions or similar promotional deals which provide to the Customer a financial incentive or rebate or the provision of Products free of charge or at a discounted rate from the ordinary retail price when entering into a Contract and which shall be as set out in the Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Minimum Period: the minimum period of duration of the Contract as set out in the Order.

Mobile Phone Equipment: any cellular or landline telephone but excluding any cellular or landline equipment owned by the Customer as at the date of the Contract.

Network Provider: the telecommunications company which provides, amongst other things, the mobile network and telecommunications infrastructure for the Goods.

Network Provider Agreement: the agreement between the Network Provider and the Customer in respect of the provision of an element of the Services by the Network Provider to the Customer as set out in clause 7.4.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Supplier's quotation.

Services: the services, supplied either by the Supplier or the Network Provider to the Customer as set out in the Service Specification below.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Specific Terms: any terms and conditions set out in the Order.

Supplier: Vivio Limited registered in England and Wales with company number 04237192.

Supplier Materials: has the meaning set out in clause 8.1(g).

1.2 Construction. In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(e) in the case of conflict between these Conditions and the Specific Terms the Specific Terms shall take priority; and

(f) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Subject to clauses 2.5 and 2.6, and in the event of conflict, the Conditions are to be read in priority to the Specific Terms and any document incorporated by reference and the document higher in the order of precedence will prevail to resolve the conflict.

2.5 A provision in the Specific Terms shall override a provision in the Conditions with which it is in conflict if and only if the provision in the Specific Term expressly refers to, and states its intention to override, the provisions of the Conditions.

2.6 A Specific Term shall only amend a provision in the Conditions as regards the transaction effected by that Order and shall not amend the Conditions generally or in respect of the transaction effected by any other Order.

2.7 Any samples, drawings, descriptive matter or advertising or third party material (including but not limited to tariff or call rate sheets) issued by the Supplier or a Network Provider and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's or a third party's or Network Provider's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.8 These Conditions apply to the Contract to the exclusion of any other terms other than the Specific Terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.9 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

2.10 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are described in the Order as modified by any applicable Goods Specification.

3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements or the relevant Network Provider.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3 Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 3 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **QUALITY OF GOODS**

5.1 The Customer has selected the Goods using its own skill and judgement and accepts responsibility for doing so. The Supplier does not warrant that the Goods will be fit for purposes intended by the Customer or that use of the Goods will be uninterrupted or error free.

5.2 If the Customer does not obtain direct from the manufacturer or supplier express warranties about the Goods, the Supplier will use reasonable endeavours, on request and at the Customer's cost, to transfer any transferable warranties the Supplier has for the Goods to the Customer, using the Supplier's standard form.

5.3 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

6. **TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the later of the fulfilment of any minimum term of any Network Provider Agreement and the Supplier receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(m); and

(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(m), then, without limiting any other right or remedy the Supplier may have:

(a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. **SUPPLY OF SERVICES**

7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects. The Customer has selected the Services using its own skill and judgement and accepts responsibility for doing so. The Supplier does not warrant that the Services will be fit for purposes intended by the Customer or that use of the Services will be uninterrupted or error free. The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements or the relevant Network Provider.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 Where any element of the Services is to be provided by the Network Provider the Customer shall if required enter into an agreement with the Network Provider in respect of such Services.

7.5 The Supplier warrants to the Customer that the Services (other than those to be provided under the Network Provider Agreement) will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

    (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

    (b) co-operate with the Supplier in all matters relating to the Services;

    (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

    (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

    (e) prepare the Customer's premises for the supply of the Services;

    (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

    (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

    (h) be responsible for the safe keeping and safe use of any Goods provided to it during the term of the Contract. In particular, the Customer agrees during the term of the Contract to use all Goods with reasonable care in accordance with their relevant operating specifications or manufacturer's instructions, and not to use any Goods in conjunction with any equipment which the Supplier, or the manufacturer of the Goods, did not supply or otherwise approve of in advance;

    (i) comply with its obligations pursuant to the Contract and the Network Provider Agreement.

8.2 The Customer shall use all applicable Goods in accordance with the Act. The Supplier shall not be under any obligation to connect or keep connected any Goods or equipment if it does not comply with the Act or if in the reasonable opinion of the Supplier it is likely to cause death, personal injury, and damage or to impair the quality of the Services.

8.3 The Customer shall ensure that each such item of Mobile Phone Equipment which is the subject of a Network Provider Agreement makes an average of at least 10 minutes per month of outbound calls (or SMS/ GPRS usage of equivalent value, i.e. £1+) over a rolling three month period, to be considered "active" at the time the handset is assessed. If at any time during the Minimum Period there is a significant drop in usage of the such Mobile Phone Equipment, or there is otherwise a failure on the part of the Customer to adhere to any of the provisions of this clause 8.3, the Supplier shall be entitled to terminate the Contract immediately and/or recover any Incentives paid under the Contract in addition to all losses and charges which the Supplier suffers as a result of the termination.

8.4 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

    (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

    (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8; and

    (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 Subject to clause 9.2, the price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's prevailing price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 In the case of Mobile Phone Equipment which is the subject of a Network Provider Agreement, if the Customer terminates the Network Provider Agreement prior to the expiry of any minimum term in the Network Provider Agreement, at the Supplier's election:-

    (a) the Customer shall upon demand pay to the Supplier the original SIM free retail price of the Mobile Phone Equipment as at the date of the relevant Network Provider Agreement;

    (b) the Customer shall upon demand repay to the Supplier any monies or cash equivalent provided by the Supplier to the Customer for the purchase of Mobile Phone Equipment; and/or

    (c) the Supplier may reduce including to zero any balance on any account (including incentives) held by the Supplier in respect of the Customer for the purposes of the purchase of Mobile Phone Equipment. .

9.3 The charges for Services shall be payable either to the Supplier or the Network Provider as set out in the Order. If no charges are quoted in the Order the Supplier's and Network Provider's charges shall be on their prevailing rates and/or a time and materials basis from time to time:

    (a) the charges shall be calculated in accordance with the Supplier's or the Network Provider's standard rates, as set out in the Supplier's or the Network Provider's website or as notified to the Customer upon request;

    (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an seven-hour day from 9.00 am to 5.00 pm worked on Business Days;

    (c) the Supplier shall be entitled to charge an overtime rate of 150% per cent of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.3(b); and

    (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.4 The Supplier reserves the right to:

    (a) increase its charges for all or any part of the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 2 weeks before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Customer; and

    (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

        (i) the Network Provider;

        (ii) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

        (iii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

        (iv) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.5 The Customer acknowledges that upon the expiry of the Minimum Period, any discount

or incentive programs to which Customer was previously entitled shall expire and the

charges shall automatically revert to the prevailing charges of the Supplier (available at

www.vivio.co.uk/connect-rates-january) and the Network Provider (as applicable) from time to time. Such expiry of any discount or incentive programs shall not constitute fee increases.

9.6   In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, unless stated otherwise in the Order, the Supplier shall invoice the Customer monthly in arrears. The Customer shall also be liable to pay charges to the Network Provider in respect of services provided by the Network Provider directly to the Customer pursuant to the Network Provider Agreement.

9.7   The Customer shall pay each invoice submitted by the Supplier:

(a)   unless stated otherwise in the Order within 30 days of the date of the invoice; and

(b)   in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.8   All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.9   If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.10   The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10.   INCENTIVES

10.1   Without limiting any of its other rights or remedies, if (i) the Supplier does not receive from the Network Provider the expected amount of monies towards the payment of the Incentives or (ii) the Customer, at any time, fails to perform, delays in performing or breaches any of its obligations under the Contract or under the Network Provider Agreement or fails to fulfil any minimum airtime requirements of the Network Provider Agreement, the Supplier may: (a) withhold any Incentives otherwise due to the Customer under the Contract, (b) otherwise set-off any amount owing to the Customer by it against the payment of any Incentives, (c) claim repayment of the value of any Incentives paid to the Customer and/or (d) cease payment of any future Incentives to the Customer.

10.2   Where, as part of any Incentive, the Supplier is to provide a fixed price line rental via cash-back or line credit, this fixed price is dependent on the Network Provider not increasing the price of its services. Where the price of the services is increased by the Network Provider, the amount of payments payable to the Customer by the Supplier as part of any Incentive will not increase and the Customer will remain liable to the Network Provider for any increased charges.

10.3   The Customer shall repay any Incentives paid to it where the Supplier has not been able to complete an Order due to Force Majeure and the Supplier is entitled to and exercises such right to terminate the Contract as a result.

10.4   The Customer must utilise all Incentives during the Minimum Period. Any unused Incentives shall expire at the end of the Minimum Period and for the avoidance of doubt the Supplier shall not be obliged to pay to the Customer any further Incentives or an amount equal to the unused Incentives.

10.5   Subject to the foregoing, the Incentives shall be payable by the Customer to the Supplier as set out in the Order. In the event of an incomplete or absent reference the Incentives

shall be payable in accordance with the Supplier's custom and practice from time to time, which as at the date of the Contract is as follows:-

(a)   hardware funding may be drawdown by the Customer immediately;

(b)   other Incentives shall be payable in equal monthly instalments during the Minimum Period; and

(c)   small amounts of Incentives in respect of connections to a Network Provider shall be payable 120 days after the respective connection has been made.

11.   INTELLECTUAL PROPERTY RIGHTS

11.1   All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

11.2   The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services or the Goods, the Customer's use of any such Intellectual Property Rights is conditional on either the Supplier or the Customer obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer or the Customer to use such rights.

11.3   All Supplier Materials are the exclusive property of the Supplier.

12.   CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 12 shall survive termination of the Contract.

13.   LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1   Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a)   death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b)   fraud or fraudulent misrepresentation;

(c)   breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(d)   breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

(e)   defective products under the Consumer Protection Act 1987.

13.2   Subject to clause 13.1:

(a)   the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and

(b)   the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 50% (fifty per cent) of the Charges paid by the Customer.

13.3   The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4   The Supplier shall not under any circumstances be liable to the Customer in respect of:-

    (a)   any element of the Services which is the subject of the Network Provider Agreement;

    (b)   the performance or failure to perform by the Network Provider of its obligations pursuant to the Network Provider Agreement.

13.5   This clause 13 shall survive termination of the Contract.

14.   TERMINATION

14.1   Subject to clauses, 8.3 and 14.2, the Contract shall commence on the Commencement Date and shall continue until either party gives the other party not less than 30 days' written notice, such notice not to expire prior to the end of the Minimum Period.

14.2   Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

    (a)   the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

    (b)   the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

    (c)   the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

    (d)   a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

    (e)   the other party (being an individual) is the subject of a bankruptcy petition or order;

    (f)   a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

    (g)   an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

    (h)   the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

    (i)   a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

    (j)   any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(b) to clause 14.2(i) (inclusive);

    (k)   the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

    (l)   the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

    (m)   the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.3   Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

14.4   Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14.5   On termination of the Contract for any reason:

    (a)   the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

    (b)   the Customer shall return all of the Supplier Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

    (c)   any unused Incentives shall expire and for the avoidance of doubt the Supplier shall not be obliged to pay to the Customer any further Incentives or an amount equal to the unused Incentives;

    (d)   the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

    (e)   clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15.   FORCE MAJEURE

15.1   For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service, Network Provider or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, subcontractors or Network Providers.

15.2   The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.3   If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 2 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16.   DATA PROTECTION

16.1   The following definitions apply:

    (a)   Data Protection Legislation means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation (*(EU) 2016/679*) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

    (b)   the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "processing" bear the respective meanings given them in the Data Protection Legislation.

    (c)   Data includes personal data.

    (d)   Customer Personal Data and Supplier Personal Data mean any Personal Data provided by or on behalf of the Customer or the Supplier, respectively.

16.2   Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

16.3   The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor.

16.4 Without prejudice to the generality of clause 16.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

16.5 Without prejudice to the generality of clause 16.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

    (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

    (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

    (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

    (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

        (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

        (ii) the data subject has enforceable rights and effective legal remedies;

        (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

        (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

    (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

    (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;

    (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

    (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 16 and allow for audits on reasonable terms by the Customer or the Customer's designated auditor.

16.6 The Customer consents to the Supplier appointing third-party processors of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 16.6.

16.7 Either party may, at any time on not less than 30 days' notice, revise this clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

16.8 Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

17. GENERAL

17.1 **Assignment and other dealings.**

    (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

    (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 **Notices.**

    (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

    (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

    (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

17.3 **Severance.**

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

    (b) If any provision or part-provision of this Contract 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.

17.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

17.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

17.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions other than the Specific Terms shall be effective unless it is agreed in writing and signed by the Supplier.

17.8 **Governing law.** 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 by and construed in accordance with the law of England and Wales.

17.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

18. HOW WE USE YOUR PERSONAL DATA

18.1   This Privacy Notice explains how Vivio uses and manages the information we may hold about our Clients and their employees. This includes:

    (a)   Why we collect and keep information about you and your employees.

    (b)   What information we collect.

    (c)   How long we may keep this information.

    (d)   Who may see this information.

    (e)   Who we may share this information with.

    (f)   Your rights in relation to your information.

18.2   **Confidentiality.** Vivio collects, stores and uses only small amounts of personal information. The information we do collect is used by different people as part of their normal work. We take our duty to protect personal information very seriously. We will take all reasonable means to keep this information confidential whether this is held on computer, on paper or on other media. Every member of staff working for Vivio has a legal duty to keep information about you and your employees secure and confidential. This is also included in staff contracts of employment.

18.3   **Information we hold about you.** At Vivio, we aim to provide you with the highest quality of Client Service. To do this we must keep records about you, your company, your employees and the services we have provided to you or plan to provide to you. The information we hold about you is protected by strict physical, electronic and other means. Our Client Services staff may ask you or your employees to provide certain personal information. This information is necessary in order for us to provide you with the best possible service. Information about you may be written on paper or recorded electronically. The types of information we collect or process may include:

    (a)   Director / employee name(s)

    (b)   Mobile phone number(s)

    (c)   Mobile /fixed line phone call records

    (d)   Director / employee home address(es)

    (e)   Office address(es)

    (f)   Director date of birth

    (g)   Director personal identification documents

    (h)   Director / employee personal contact details such as email address / phone number

    (i)   Mobile device location information

    (j)   Mobile / fixed service call recordings

18.4   **How your personal information is used. We** comply with the Data Protection Regulations to process your personal data. This is in order to provide you with appropriate services or to meet contractual or legal obligations or because you have consented to provide us with the information. We do not send or process your data outside the European Economic Area. Your records are mostly used to direct, manage and deliver your services so that:

    (a)   Our Client Services team have accurate and up-to-date information about the services you receive, and to provide you and your employees with the right advice and support about these services

    (b)   Any concerns you may have about your Services can be properly investigated.

If we intend to use the information for any other purpose then you will normally be asked first. We respect your wishes to not share certain items of confidential information about you and your employees unless we are required to share it by law. We will always explain what information we want to share, why we want to share it and who we want to share it with. This will then help you to decide if that's ok.

18.5   **Who we may share your information with.** Information will be seen by staff looking after you and your employees and by others involved in delivering your services. There is sometimes a need to share information about you with other telecomms providers so that we can work together to provide you with the best service for your needs. But we will only ever share your information when there is legitimate need to do so. We will not share information with friends or relatives unless they are legally acting on your behalf or unless you say it's ok. We will only share your information with anyone else if we really need to, such as to keep you or other people safe or if a court asks for the information.

18.6   **Keeping your information accurate and up-to-date.** We will make sure that the information we hold about you and your employees is accurate and up-to-date. We may check with you from time to time to make sure we have the right information. If the information is not correct, you can ask us to change it.

18.7   **Your Rights**

    (a)   You have the right to be informed about how personal information is used by Vivio. This document aims to explain how we use this information but if you are unsure or require more information, ask a member of staff.

    (b)   You and your employees have the right to have any inaccurate information corrected.

    (c)   You and your employees have the right to have information deleted or to stop us from using it when we don't need to keep it any more.

(d)   You and your employees have the right to access the personal information we hold about you.

(e)   You have the right of portability – to ask for your information in such a way that it can be easily transferred to different service providers

(f)   You have the right to object if your personal data is being used – particularly for Marketing Purposes

(g)   You have the right to protect yourself against automated decision making and profiling

18.8   **Can I see my own records?** In most cases you or your employees can see or receive a copy of your records and to have any information you do not understand explained to you. If you have any questions about the personal data we hold please download and complete the Subject Access Request form available at www.vivio.co.uk/sar and then email it to us at mydata@vivio.co.uk. We will provide the information to you within a month of you asking for it.

18.9   **How long do we keep your records?** We keep information about you in paper records and also in electronic records. We need to keep this information in order to provide you with the best possible Service. Certain types of information about you need to be kept for longer than other information. We will not keep information about you longer than is necessary or longer than required by law.

18.10   **Further Information.** If you need further information about the information that we keep about you, speak to a member of staff. We will try to answer your questions. You have the right to complain to the Information Commissioner's Office if you don't think we are dealing with your records correctly. You can write to them at:

Information Commissioners Office, Wycliffe House, Water Lan, Wilmslow, Cheshire, SK9 5AF

Or email them at accessicoinformation@ico.org.uk

Or contact them via their website https://ico.org.uk/concerns