

Cloud Compute Services

SERVICE DESCRIPTION

including Terms & Conditions

CloudCompute v2

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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.

Whilst 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 web servers 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

Username 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:

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.

Managed Services Terms & Conditions



The definitions and rules of interpretation in this clause apply in this agreement.

Acceptable Use Policy: the Supplier's policy concerning the use of the Managed Services as set out in Schedule 4.

Assets: any Customer-side Equipment, Software or Intellectual Property Rights used by the Supplier exclusively for the delivery of the Managed Services to the Customer.

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

Change Control Procedure: the procedures set out in clause 11.

Commencement Date: has the meaning given in clause 2.3.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its **Representatives**) to the other party and that party's Representatives in connection with this agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Customer Data: any information that is provided by the Customer to the Supplier as part of the Customer's use of the Managed Services, including any information derived from such information.

Customer Personal Data: any Personal Data comprised in the Customer Data.

Customer Site: any premises occupied by the Customer at which it receives the Managed Services.

Customer's Operating Environment: the Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Client in connection with its use of the Services and which interfaces with the Supplier's System in order for the Customer to receive the Services, but excluding the Customer-side Equipment.

Customer's Project Manager: the person appointed in accordance with clause 7(d). The Customer's Project Manager at the Effective Date is named in the Order Form.

Customer-side Equipment: any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by the Supplier as part of the Managed Services.

Data Controller: has the meaning given to that term in the Data Protection Legislation.

Data Processor: has the meaning given to that term in the Data Protection Legislation.

Disaster Recovery Plan: the plans maintained by the Supplier containing the actions to be taken, the resources to be used and the procedures to be followed to support recovery in the event of a disaster affecting the Managed Services provided under this agreement.

Data Protection Legislation: (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.

Dispute Resolution Procedure: the procedure described in clause 26.

Effective Date: the date of this agreement.

Fees: the fees payable to the Supplier, as described in the Order Form.

Hardware: all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by the Supplier to deliver the Managed Services to the Customer.

Initial Term: unless stated otherwise in the Order the period of three years from the Commencement Date.

Intellectual Property Rights: any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of those that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

Maintenance: any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Managed Services, as well as any other support or training services provided to the Customer under this agreement, all as described in Schedule 2.

Managed Services: the service described in the Managed Service Specification to be performed by the Supplier in accordance with this agreement.

Managed Service Specification: the specification for the Managed Services as described in the Order Form and/or a Statement of Work.

Normal Business Hours: 8.30 am to 5.30 pm local UK time on Business Days.

Order Form: the Supplier's order form for the supply of the Services.

Personal Data: has the meaning given to that term in the Data Protection Legislation.

Project Plan: the plan to be developed in the planning stage of the Set-up Service.

Service Credit: any credits payable to the Customer in accordance with the Service Level Arrangements.

Service Level Arrangements: the service level arrangements set out in Schedule 3.

Services: the Set-up Service, the Managed Services and the Maintenance.

Set-up Service: the configuration and related work referred to in clause 2 and Schedule 1, to be performed by the Supplier to set up the Managed Services.

Software: any software used by the Supplier to provide the Managed Services to the Customer whether owned by a third party, by the Customer (**Customer Software**) or by the Supplier.

Statement of Work: as defined in clause 8.1.

Supplier's Project Manager: the person appointed in accordance with clause 2.1.

Supplier's System: the information and communications technology system to be used by the Supplier in performing the Services, including the Hardware, the Software, the Customer-side Equipment and communications links between the Hardware and the Customer-side Equipment and the Customer's Operating Environment.

Virus: without limitation, any malicious code, Trojans, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Software and or the Managed Services.

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.8 Any phrase introduced by the words **including**, **includes**, **in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement. References to paragraphs are to paragraphs of the relevant schedule.
- 1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

Managed Services Terms & Conditions



- 1.11 If there is an inconsistency between any of the provisions in the main body of this agreement, the Schedules, the Order Form and a Statement of Work, the order of interpretation shall be the Statement of Work, the Order Form, the main body of this agreement and the Schedules.
- 2. SET-UP SERVICES**
- 2.1 The Supplier shall appoint the Supplier's Project Manager, who shall have the authority to contractually bind the Supplier on all matters relating to this agreement. The Supplier shall use reasonable endeavours to ensure continuity of the Supplier's Project Manager, but has the right to replace him from time to time where reasonably necessary in the interests of the Supplier's business.
- 2.2 The Supplier shall perform the Set-up Services in accordance with the timetable agreed between the parties. The Supplier shall use reasonable endeavours to meet such agreed performance dates, but any such dates shall be estimates only, and time shall not be of the essence in this agreement.
- 2.3 When the Supplier considers that the Managed Services are ready for activation it shall so notify the Customer ("**Commencement Date**").
- 3. SERVICE PROVISION**
- 3.1 The Supplier shall provide the Managed Services as from the Commencement Date until expiry or termination of this agreement for any reason.
- 3.2 The Service Level Arrangements shall apply with effect from the start of the first complete month occurring at least 30 days after the Commencement Date.
- 3.3 The Customer shall use the Services in accordance with the Acceptable Use Policy and in particular (but without limitation) the Customer shall use all reasonable endeavors to ensure that it does not:
- (a) send any message, email or other communication which, under the laws of England and Wales or, where appropriate, under international laws, conventions, codes or regulations applicable to the Internet:
 - (i) is in breach of those laws, codes or regulations including but not limited to infringement of copyright and other Intellectual Property Rights, defamation, theft, fraud, drug-trafficking, money- laundering and terrorism;
 - (ii) may incite violence, sadism, cruelty or racial hatred;
 - (iii) may facilitate prostitution or pedophilia;
 - (iv) is pornographic, obscene, indecent, abusive, offensive or menacing.
 - (b) knowingly create and/or introduce any Virus or advise any other party how to do so;
 - (c) invade the privacy of other users of the Services or the Internet, for example by sending unsolicited emails nor collect or transfer Personal Data without consent.
- 3.4 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 3.5 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 3.6 The Customer shall not provide the Managed Services to third parties.
- 3.7 The Managed Services are supplied subject to the condition that there will be no abuse or fraudulent use thereof. Abuse and fraudulent use of the Managed Services shall include (without limitation):
- (a) obtaining, or attempting to obtain, the Managed Services by rearranging, tampering with, or making connection with any facilities of the Supplier, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices whatsoever, with intent to avoid payment, in whole or in part, of the regular charges for the Managed Services;
 - (b) attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of the Supplier or of another customer of Supplier; or
 - (c) using the Services in such a manner as to interfere unreasonably with the use of the Managed Services by any other user or authorised person.
- 3.8 The Supplier reserves the right to:
- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
 - (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,
- provided that this has no adverse effect on the Supplier's obligations under this agreement and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Customer and the parties shall follow the Change Control Procedure.
- 4. CUSTOMER DATA**
- 4.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.2 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.
- 4.3 Without prejudice to the generality of clause 4.1, 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.
- 4.4 Without prejudice to the generality of clause 4.1, 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;

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- (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 4 and allow for audits on reasonable terms by the Customer or the Customer's designated auditor.
- 4.5 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 processors 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 4.5.
- 4.6 Either party may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 5. SUPPLIER'S OBLIGATIONS**
- 5.1 The Supplier warrants that the Managed Services will be performed with all reasonable skill and that it will be provided substantially in accordance with the terms and conditions of this agreement.
- 5.2 The warranty in clause 5.1 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to the Supplier's instructions.
- 5.3 If the Managed Services do not conform with the warranty in clause 5.1, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty in clause 5.1.
- 5.4 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Managed Services will be uninterrupted or error-free.
- 5.5 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under this agreement.
- 6. SECURITY**
- 6.1 The Supplier shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Services, the Supplier's System and related networks or resources and the Customer Data.
- 6.2 The Supplier shall ensure that the Supplier's System is designed, maintained and upgraded at all times so as to minimise the risk of attack by Viruses.
- 6.3 The Customer shall promptly inform the Supplier if it suspects or uncovers any breach of security, and shall use all commercially reasonable endeavours to promptly remedy such breach.
- 6.4 The Customer shall use an up-to-date virus-scanning program on all the Customer's Data.
- 6.5 The Customer shall maintain confidentiality of its login names, passwords and other confidential information relating to the Customer's access to the Managed Services.
- 6.6 The Customer acknowledges that the Supplier does not operate or exercise control over, and accepts no responsibility for the content of the Customer Data received on the Supplier's System.
- 6.7 The Customer acknowledges that the internet is not secure and accordingly the Supplier cannot guarantee the privacy of the Customer Data.
- 7. CUSTOMER'S OBLIGATIONS**
- The Customer shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier, in order to render the Managed Services, including Customer Data, security access information and software interfaces, to the Customer's other business applications;
 - (b) obtain and maintain the Customer's Operating Environment;
 - (c) provide such personnel assistance as may be reasonably requested by the Supplier from time to time;
 - (d) appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager;
 - (e) appoint the CSRs and notify the Supplier in writing of any change to the CSRs;
 - (f) comply with all applicable laws and regulations with respect to its activities under this agreement; and
 - (g) carry out all other Customer responsibilities set out in this agreement or in any of the schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary.
- 8. PROFESSIONAL SERVICES**
- 8.1 The Supplier shall provide professional services as agreed between the Supplier and the Customer ("**Statement of Work**") in addition to and to complement the Services.
- 8.2 The Statement of Work shall set out the:
- (a) scope of the professional services to be provided by The Supplier;
 - (b) deliverables by the Supplier to the Customer;
 - (c) period during which the professional services are to be delivered or the date by which deliverables will be delivered to the Customer;
 - (d) specification of the professional services to be delivered;
 - (e) conditions upon which professional services will be delivered to the Customer by the Supplier;
 - (f) acceptance tests to be carried out (if applicable) in respect of the professional services;
 - (g) charges to be paid by the Customer to the Supplier for the supply of services pursuant to the Statement of Work.
- 8.3 No Statement of Work shall be binding until signed by both the Supplier and the Customer.
- 8.4 The Supplier shall perform the professional services in a professional manner and with due care and skill.

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- 8.5 Each party acknowledges that the scope and specification of the professional services may be subject to change subsequent to the commencement of the Statement of Work. Variation to the Statement of Work shall be agreed between in accordance with the Change Control Procedure.
- 8.6 The Customer may cancel the Statement of Work by giving notice to The Supplier in writing. The following charges are payable in upon cancellation:
- (a) 30 days' notice or more before commencement of the Statement of Work - no charge;
 - (b) 14 – 29 days' notice before commencement of the Statement of Work - 50% of charges payable pursuant to the Statement of Work;
 - (c) Less than 14 days' notice before commencement of the Statement of Work – 90% of charges payable pursuant to the Statement of Work.
- 9. WARRANTIES**
- 9.1 The Customer warrants that:
- (a) it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Customer;
 - (b) it has the authority to grant any rights to be granted to the Supplier under this agreement, including the right to provide the Software and Hardware to the Supplier as indicated in this agreement and for the same to be used in the provision of the Managed Services and otherwise in connection with this agreement;
 - (c) it will comply with and use the Managed Services in accordance with the terms of this agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws or in breach of the Acceptable Use Policy;
 - (d) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Supplier, any materials reasonably necessary for the fulfilment of all its obligations under this agreement, including any third-party licences and consents in respect of any Customer Software; and
 - (e) the Supplier's use in the provision of the Managed Services or otherwise in connection with this agreement of any third-party materials, including any Hardware or Software supplied by the Customer to the Supplier for use in the provision of the Managed Services or otherwise in connection with this agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.
- 9.2 The Supplier warrants and represents that:
- (a) it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Supplier;
 - (b) it owns or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this agreement including for the Customer's use and receipt of the Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
 - (c) it will comply with all applicable laws in performing its obligations under this agreement;
 - (d) the Customer's use of any third-party materials, including any materials supplied by the Supplier to the Customer, shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party;
 - (e) any software, system or telecommunications provided by or on behalf of the Supplier will be tested for Viruses and any identified Viruses before the date of delivery or use of such software, systems or telecommunications by the Supplier; and
 - (f) all personnel and sub-contractors used by the Supplier in the performance of this agreement are adequately skilled and experienced for the activities they are required to perform.
- 10. CHARGES AND PAYMENT**
- 10.1 The Customer shall pay Fees set out in the Order Form for the Set-up Services and the monthly Fees set out in the Order Form for the Managed Services.
- 10.2 The Customer shall reimburse the Supplier for all actual, reasonable travel costs and expenses including airfares and mileage at 50 pence per mile, hotels and meals incurred by the Supplier in performance of the Set-up Service.
- 10.3 All amounts and Fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 10.4 The Supplier shall invoice the Customer monthly as of the last day of each month for all Services performed by the Supplier during that month. If any Service Credits are due, then they will be shown as a deduction from the invoice.
- 10.5 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 17, 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.
- 11. CHANGE CONTROL**
- 11.1 If either party wishes to change the scope of the Managed Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.
- 11.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Fees arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on the terms of this agreement.
- 11.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 11.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Project Plan and any other relevant terms of this agreement to take account of the change.
- 12. PROPRIETARY RIGHTS**
- 12.1 The Customer acknowledges and agrees that, as between the parties, the Supplier and/or its licensors own all Intellectual Property Rights in all materials connected with the Services and in any material developed or produced in connection with this agreement by the Supplier, its officers, employees, subcontractors or agents. Except as expressly stated herein, this agreement does not grant the Customer any rights to such Intellectual Property Rights.
- 12.2 The Customer shall own and retain all rights, title and interest in and to the Customer Data. The Supplier shall have no rights to access, use or modify the Customer Data unless it has the prior written consent of the Customer.
- 13. DOMAIN NAMES**
- 13.1 If the Customer instructs the Supplier to obtain a domain name for the Customer, the Supplier shall act as an agent for the Customer in dealing with the relevant domain name registration authority. The contract for the domain name shall be between the Customer and the relevant domain name

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- registration authority and the Customer agrees that they shall be solely responsible for renewals, legal, technical, administrative, billing or other requirements imposed by the relevant domain name registration authority (and relevant costs and expenses thereof).
- 13.2 The Supplier gives no warranty that the domain name requested will not infringe the rights of any third party and all such enquiries shall be the responsibility of the Customer, and the domain name shall form the Customer's intellectual property for the purposes of this agreement.
- 13.3 If the Supplier licences to the Customer an IP address as part of the Services, such IP address shall (to the extent permitted by law) revert to the Supplier after termination of this agreement for any reason whatsoever, whereupon the Customer shall cease using the address. At any time after such termination, the Supplier may re-assign the address to another user.
- 14. CONFIDENTIALITY**
- 14.1 The provisions of this clause 14 shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
 - (e) the parties agree in writing is not confidential or may be disclosed; or
 - (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 14.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (**Permitted Purpose**); or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 14.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 14.4 The Customer acknowledges that the Supplier's Confidential Information includes any designs, plans, software or other materials created by the Supplier in connection with the Managed Services and the Customer agrees not to make use of any such material for any purpose other than receipt of the Managed Services from the Supplier.
- 14.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.6 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 14.7 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.7, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.8 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.
- 14.9 The provisions of this clause 14 shall continue to apply after termination of this agreement.
- 15. LIMITATION OF LIABILITY**
- 15.1 This clause 15 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of this agreement;
 - (b) any use made by the Customer of the Managed Services; and
 - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 15.2 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Managed Services, or any actions taken by the Supplier at the Customer's direction; and
 - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 15.3 Nothing in this agreement excludes or limits the liability of the Supplier for:
- (a) death or personal injury caused by the Supplier's negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot lawfully be excluded or limited.
- 15.4 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.
- 15.5 Subject to clause 15.3 and clause 15.4:
- (a) the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
 - (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Managed Services during the 12 months preceding the date on which the claim arose.
- 16. TERM AND TERMINATION**
- 16.1 This agreement shall commence on the Effective Date. Unless terminated earlier in accordance with this clause 16, this agreement shall continue in force for the Initial Term and shall automatically continue until terminated by one party giving to the other 30 days' written notice to terminate this agreement at any time after the end of the Initial Term.
- 16.2 Without prejudice to any rights that the parties have accrued under this agreement or any of their respective remedies, obligations or liabilities either party may terminate this agreement with immediate effect by giving written notice to the other party if:

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- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) 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) 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;
 - (d) 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 (in the case of 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;
 - (e) 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 that 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;
 - (f) 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);
 - (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (h) 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;
 - (i) 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 the other party's assets and such attachment or process is not discharged within 14 days;
 - (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 16.2(c) to clause 16.2(i) (inclusive); or
 - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.3 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.
- 16.4 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 16.5 On termination of this agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Managed Services;
 - (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
 - (c) if the Supplier receives, no later than ten days after the effective date of the termination or expiry of this agreement, a written request for the delivery to the Customer of the most recent backup of the Customer Data, the Supplier shall use reasonable commercial endeavours to deliver the backup to the Customer within 30 days of its receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer at that time, provided that the Customer has, at that time, paid all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination). Once such ten-day period has expired or the Supplier has, at the Customer's request, delivered to the Customer the most recent backup of the Customer Data (as applicable), the Supplier shall promptly expunge from the Supplier's System and otherwise destroy or dispose of all of the Customer Data in its possession or control. The Customer shall pay all reasonable costs and expenses incurred by the Supplier in returning and disposing of Customer Data and expunging it from the Supplier's System.
- 16.6 If a party is required by any law, regulation, or government or regulatory body (**Regulatory Requirement**) to retain any documents or materials which it would otherwise be obliged to return or destroy under clause 16.5(c), it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 14 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.
- 17. FORCE MAJEURE**
- 17.1 The Supplier shall have no liability to the Customer under this agreement if it is prevented from, or delayed in, performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control including supplier delays in or failure to supply, strikes, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Supplier), act of God, war, act of terrorism, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a **Force Majeure Event**), provided that:
- (a) the Customer is notified of such an event and its expected duration; and
 - (b) the Supplier uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,
- and that if the period of delay or non-performance continues for two weeks the Supplier may terminate this agreement by giving immediate written notice to the other party.
- 18. WAIVER**
- No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19. SEVERANCE**
- 19.1 If any provision or part-provision of this agreement 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 this agreement.
- 19.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20. ENTIRE AGREEMENT AND AMENDMENT**
- 20.1 This agreement and the Order Form constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 20.2 Subject to clauses 20.3 and 20.4, and in the event of conflict, the provisions of this agreement are to be read in priority to the Order Form and any document incorporated by reference and the document higher in the order of precedence will prevail to resolve the conflict.

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- 20.3 A provision in an Order Form shall override a provision in this agreement with which it is in conflict if and only if the provision in the Order Form expressly refers to, and states its intention to override, the provision in the agreement.
- 20.4 An Order Form shall only amend a provision in the agreement as regards the transaction effected by that Order Form and shall not amend the agreement generally or in respect of the transaction effected by any other Order Form. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 20.5 Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.
- 20.6 Nothing in this clause shall limit or exclude any liability for fraud.
- 20.7 No alteration to or variation of this agreement shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative.
- 21. ASSIGNMENT**
- 21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 21.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner, with all or any of its rights or obligations under this agreement without the consent of the Customer.
- 22. NO PARTNERSHIP OR AGENCY**
- 22.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 23. THIRD-PARTY RIGHTS**
- No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 24. RIGHTS AND REMEDIES**
- Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 25. NOTICES**
- 25.1 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.
- 25.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 25.1; 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.
- 25.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 26. DISPUTE RESOLUTION**
- 26.1 If a dispute arises under this agreement (**Dispute**), including any Dispute arising out of any amount due to a party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process (**Dispute Notice**).
- 26.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, then each party will promptly (but no later than five Business Days thereafter):
- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this agreement (**Designated Representative**); and
 - (b) notify the other party in writing of the name and contact information of such Designated Representative.
- 26.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured.
- 26.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, then either party may proceed with any other available remedy.
- 26.5 Notwithstanding the foregoing, either party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.
- 27. 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 by and construed in accordance with the law of England and Wales.
- 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

28. How we use your personal data

- 28.1 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.
- 28.2 **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.
- 28.3 **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

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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

28.4 **How your personal information is used.** We comply with the Data Protection Legislation 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.

28.5 **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.

28.6 **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.

28.7 **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

28.8 **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.

28.9 **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.

28.10 **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 accesscoinformation@ico.org.uk

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

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Schedule 1 Set-up Services

- 1. **PLANNING AND DUE DILIGENCE**
The Supplier shall prepare the Project Plan in co-operation with the Customer.
- 2. **IMPLEMENTATION**
The Supplier and the Customer shall co-operate in implementing the Managed Services in accordance with the implementation provisions of the Project Plan.
- 3. **ROLL-OUT**
The Supplier and the Customer shall co-operate in rolling out the Managed Services in accordance with the roll-out provisions of the Project Plan.
- 4. **CUSTOMER SOFTWARE**
If the Project Plan identifies any Customer Software then the Customer will, as from the Commencement Date, grant the Supplier a royalty-free licence to use such Customer Software for the purpose of providing the Managed Services for the duration of this agreement.
- 5. **INTELLECTUAL PROPERTY RIGHTS**
If the Project Plan identifies any Intellectual Property Rights (aside from the Third-Party Software and the Customer Software) that is needed by the Supplier to provide the Managed Services then the Customer will, as from the Commencement Date, but in accordance with the Project Plan:
 - (a) arrange for the novation of its licences to such Intellectual Property Rights from itself to the Supplier, such novation's to be effective as of the Commencement Date;
 - (b) terminate its own licences to such Intellectual Property Rights and assist the Supplier in obtaining, as from the Commencement Date, licences directly from the licensor on similar terms; or
 - (c) grant the Supplier a royalty-free licence to use such Intellectual Property Rights for the purpose of providing the Managed Services for the duration of this agreement.

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Schedule 2 Maintenance and support

1. MAINTENANCE EVENTS

- 1.1 Maintenance work that may require interruption of the Managed Services (**Maintenance Events**) shall not normally be performed during Normal Business Hours.
- 1.2 The Supplier may interrupt the Managed Services for maintenance provided that it has given the Customer at least 48 hours advance written notice, unless in the reasonable opinion of the Supplier the maintenance work needs to be performed sooner, in which case it shall provide as much notice as is practicable.
- 1.3 The Supplier shall at all times endeavour to keep any service interruptions to a minimum.

2. TECHNICAL SUPPORT SERVICES

- 2.1 Should the Customer determine that the Managed Services includes a defect, the CSRs may file error reports or support requests. The Supplier shall provide technical support services only to specified CSRs.
- 2.2 The Supplier shall accept voicemail, e-mail and web form-based incident submittal from CSRs 24 hours a day, seven days a week. The Supplier shall accept telephone calls for English language telephone support during Normal Business Hours and outside Normal Business Hours for Priority 1 incidents. The Supplier shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Customer. The Supplier shall use reasonable endeavours to respond to all support requests from CSRs within the time periods specified below, according to priority.
- 2.3 The Supplier shall determine the priority of any fault in accordance with the following table.

Priority	Description	Response time	Target resolution time
Priority 1	The entire Managed Services are completely inaccessible. Priority 1 incidents shall be reported by telephone only.	Within two Normal Business Hours.	Four Normal Business Hours. Continuous effort after initial response and with Customer co-operation.
Priority 2	Operation of the Managed Services is severely degraded, or major components of the Managed Services are not operational and work cannot reasonably continue. Priority 2 incidents shall be reported by telephone only.	Within four Normal Business Hours.	Within two Business Days after initial response.
Priority 3	Certain non-essential features of the Service are impaired while most major components of the Service remain functional.	Within 12 Normal Business Hours.	Within seven Business Days after initial response.
Priority 4	Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Services.	Within 24 Normal Business Hours.	When reasonably possible.

- 2.4 If no progress has been made on a Priority 1 or Priority 2 incident within the target resolution time, the incident shall be escalated to the Supplier's team manager. [If the incident is not resolved, then after each successive increment of the target resolution time the incident shall be escalated to the Supplier's department senior manager, followed by the Supplier's department director, followed by the CEO.
- 2.5 The Customer shall provide front-line support to other Managed Services users who are not the designated CSRs. However, the Customer's designated CSRs may contact Supplier technical support in order to report problems that the Customer's designated CSRs cannot resolve themselves after they have performed a reasonable level of diagnosis.

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Schedule 3 Service Level Arrangements

1. SERVICE AVAILABILITY

- 1.1 The Supplier shall provide at least a [99.5] % uptime service availability level (**Uptime Service Level**).
- 1.2 The Managed Services will be considered as unavailable only:
 - (a) during periods of Priority 1 or Priority 2 faults in accordance with paragraph 2.3 of Schedule 2; and
 - (b) during periods of Maintenance other than in accordance with paragraph 1 of Schedule 2.
- 1.3 For the avoidance of doubt, the Managed Services will not be considered as "unavailable" during:
 - (a) Maintenance Events as described in Schedule 2;
 - (b) Customer-caused outages or disruptions;
 - (c) outages or disruptions attributable in whole or in part to Force Majeure Events within the meaning of clause 17;
 - (d) a suspension of the Managed Services in accordance with this agreement;
 - (e) a fault on the Customer's Operating Environment;
 - (f) a fault that is a result of the Customer not complying with the Supplier's security policies
 - (g) the Supplier waiting for information from the Customer which is necessary in order to perform the Managed Services in accordance with this agreement;
 - (h) faults or omissions of the internet;
 - (i) faults or omissions in equipment, wiring, cabling, software or other services which are not maintained by the Supplier or its subcontractors;
 - (j) faults proven to be caused by a Virus introduced negligently or otherwise by the Customer onto the Customer Operating Environment;
 - (k) any material breach of this agreement by Customer which impacts on the availability of the Managed Services.

2. SERVICE CREDITS

2.1 If availability falls below the Uptime Service Level in a given month starting on the first of each month (**Service Delivery Failure**), the Customer shall be entitled to a credit on its account by an amount calculated as the product of the total cumulative uptime (expressed as a proportion of the total possible uptime minutes in the month concerned) and the total monthly Fees owed for that month.

Total cumulative uptime	Percentage of total monthly Fees for that month
Between 99.0% and 99.5%	25%
Between 95.0% and 98.9%	50%
Less than 95.0%	100%

- 2.2 The Customer acknowledges and agrees that the terms of this Schedule 3 relating to service credits do not operate by way of penalty and constitute a genuine attempt to pre-estimate loss.
- 2.3 The Supplier shall calculate the Service Credit on a three monthly basis (such first period to commence on the Commencement Date) and shall apply any Service Credit to the Customer's account within 30 days of the termination of each such three-month period.

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Schedule 4 Acceptable Use Policy

This Acceptable Use Policy describes the proper and prohibited use of the Services provided by The Supplier to the user of the Services the Customer as subscribed to through the Agreement. This Acceptable Use Policy is designed as a guideline and is not exhaustive in the description of use. The latest version of this Acceptable Use Policy can be found at www.vivio.co.uk/support/terms.

The Supplier does not monitor or censor the information within its services other than the application of network monitoring and filtering.

The Supplier reserves the right to remove any content for any reason, including but not limited to, your violation of any conditions of this Acceptable Use Policy.

The Supplier's right to remove inappropriate content under this Acceptable Use Policy shall not extend to editorial rights over the content. If the Supplier determines at its sole discretion that use of the Services have violated the terms of this Acceptable Use Policy, then without notice, the Supplier may terminate the Service Supply Agreement between the Supplier and the Customer.

The Services are not to be used to:

1. Create or maintain software download or distribution sites or sites created for the purpose of mass distribution of software products.
2. Create or maintain sites that generate system errors or exceptions that disrupt server performance or cause server-wide outages. This includes overriding or avoiding system settings and restrictions imposed the Supplier.
3. Violate any applicable laws, regulations, or other provisions having the force of law.
4. Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity.
5. Employ misleading e-mail addresses or falsify information in any part of any communication.
6. Upload, transmit, disseminate, post, store or post links to any content that:
 - 6.1. Is prohibited from transmitting or posting by law, or by contractual or fiduciary relationship;
 - 6.2. Facilitates hacking or unauthorized access or use of data, systems, servers or networks including any attempt to probe, scan or test for vulnerabilities, or to breach security or authentication measures;
 - 6.3. Falsifies origin by forging TCP/IP packet headers, e-mail headers, or any part of a message header;
 - 6.4. Interferes with service to any user, system or network by using flooding techniques, overloading a system or a network, staging or broadcasting an attack, or any other means resulting in a crash of a host either deliberately or by negligence;
 - 6.5. Infringes or contributes to any infringement of any intellectual property, material protected by copyright, trademark, patent, trade secret or proprietary right of any party;
 - 6.6. Is or may be considered unsolicited or unauthorised advertising, promotional material, junk mail, spam, spamvertisements, make money fast schemes, chain letters, pyramid schemes, or any other form of solicitation;
 - 6.7. Contains viruses, worms, trojan horses, time bombs, trap doors, or any other computer code, files, or programs or repetitive requests for information designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - 6.8. Is unlawful, harmful, threatening, abusive, harassing, unlawful, libelous, defamatory, vulgar, obscene, or invasive of privacy;
 - 6.9. Is of adult nature, pornographic, or harmful to minors;
 - 6.10. Promotes illegal activity, including providing instructions for illegal activity, or transmitting, disseminating or offering fraudulent goods, services, schemes or promotions, or furnishing false data on any signup form, contract or online application or registration, or the fraudulent use of any information obtained through the use of the Services including use of credit card numbers.
 - 6.11. Exploits the images of children or discloses personally identifiable information belonging to children.

(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.

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;

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.

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.

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

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 published 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 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 the Supplier's charges shall be on a time and materials basis:
- (a) the charges shall be calculated in accordance with the Supplier's or the Network Provider's standard daily fee 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 standard 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 standard 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 standard daily fee rates for the charges for 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 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.
- 9.9 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 the Supplier does not receive from the Network Provider the expected amount of monies towards the payment of the Incentives or if 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 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 term of the Contract; 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;	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.
	(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.	14.4	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.		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.	14.5	On termination of the Contract for any reason:
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;		(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 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;		(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)	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;		(c) 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
	(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 the other party with one or more other companies or the solvent reconstruction of that other party;		(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
	(e)	the other party (being an individual) is the subject of a bankruptcy petition or order;	15.	FORCE MAJEURE
	(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;	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.
	(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);	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.
	(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;	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.
	(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;	16.	DATA PROTECTION
	(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);	16.1	The following definitions apply:
	(k)	the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;		(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.
	(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		(b) the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "processing" bear the respective meanings given them in the Data Protection Legislation.
	(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.		(c) Data includes personal data.
			16.2	Customer Personal Data and Supplier Personal Data mean any Personal Data provided by or on behalf of the Customer or the Supplier, respectively.
			16.3	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.
				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 part 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>