

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 will 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;

Managed Services Terms & Conditions



- (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.

Managed Services Terms & Conditions



- 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:
- 30 days' notice or more before commencement of the Statement of Work - no charge;
 - 14 – 29 days' notice before commencement of the Statement of Work - 50% of charges payable pursuant to the Statement of Work;
 - 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:
- 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;
 - 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;
 - 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;
 - 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
 - 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:
- 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;
 - 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;
 - it will comply with all applicable laws in performing its obligations under this agreement;
 - 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;
 - 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
 - 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:
- the likely time required to implement the change;
 - any variations to the Fees arising from the change;
 - the likely effect of the change on the Project Plan; and
 - 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

Managed Services Terms & Conditions



- 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:

Managed Services Terms & Conditions



- (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.

Managed Services Terms & Conditions



- 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):
- 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
 - 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:
- Why we collect and keep information about you and your employees.
 - What information we collect.
 - How long we may keep this information.
 - Who may see this information.
 - Who we may share this information with.
 - 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

Managed Services Terms & Conditions



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>

Managed Services Terms & Conditions



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.

Managed Services Terms & Conditions



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.

Managed Services Terms & Conditions



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.

Managed Services Terms & Conditions



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.