



## **Vivio Mobile Services**

### **SERVICE DESCRIPTION**

including Terms & Conditions

MOBILE v3

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## SERVICE DESCRIPTION V1

Unless otherwise stated:

capitalised terms used in this Service Description have the meanings stated in the terms and conditions in the annex to this document (the “Terms”).

This Service Description is a generic document which describes in detail the range of mobile voice and data telecommunications Services that may be offered by Vivio. The Services to be provided under a Services Agreement will be specified in the Order Form and (if applicable) a Statement of Work and, for the avoidance of doubt, Vivio will have no obligation to provide Services set out in this Service Description if they are not specified in the Order Form or Statement of Work.

### 1. MOBILE Service Overview

Using a choice of network partner, Vivio Mobile Services can provide a range of mobile voice and data services, including mobile airtime with the ability to make and receive mobile voice calls, send and receive SMS and MMS, as well as mobile data connectivity, and push and pull mobile email services.

The Service can also provide the capability to access those same services abroad through roaming agreements between Vivio’s UK network partners and overseas mobile network operators.

The Service may include the provision of mobile hardware (feature phones, smartphones, dongles and associated accessories) and the provision of mobile device management (MDM), and mobile application management (MAM).

### 2. Scope of Service

Network services such as calls, SMS, MMS and mobile data are provided via the Telefonica O2 or Vodafone networks and all parts of the Service are billed by Vivio. This includes:

- Airtime (as above)
- Mobile hardware from a range of manufacturers, to connect to those networks
- A range of coverage solutions on both Telefonica O2 and Vodafone networks
- Mobile device management
- Mobile data gateway services

### 3. Number Provision and Porting

Vivio can provide new UK-based numbers, as well as offering the ability to port and migrate numbers from and to other UK network operators to or from Telefonica O2 or Vodafone within industry-standard timeframes.

### 4. Mobile Device Management & Mobile Application Management

Vivio’s mobile device management solutions deliver enterprise-grade MDM with role-based management configuration, security and support for corporate and employee-owned devices. The Services are available as fully hosted solutions.

#### Mobile Device Management

The Services can allow users to enroll certain devices, and assists the Customer’s IT department with provisioning policies and apps to those devices automatically, blacklisting or whitelisting apps, helping detect and protect against jailbroken devices, troubleshooting device and app issues, and wiping or selectively wiping a device that is lost, stolen or out of compliance. Users can have a choice of devices, while IT can help ensure compliance of corporate assets and secure corporate content on the device. The Services may also have the capability to deliver Windows apps as secure mobile services, allowing the Customer to mobilize the business - increasing user productivity, while reducing costs by helping to centralise control and security of intellectual property.

### Mobile Application Management

The Services can deliver high-performance apps to tablets or smartphones that enable the delivery of a native experience that is optimized for the type of device, as well as the network. They are hybrid cloud-ready platforms that separate the management plane from the workload to enable IT to deliver published apps on-premises, and manage workers and mobile workspaces either on-premises or in the cloud.

## 5. Coverage

Vivio can offer a range of solutions to address mobile network coverage issues that a Customer may encounter on either the Telefonica O2 or Vodafone networks. These include solutions that cater for individual users that are experiencing coverage issues at a specific site, through to bespoke coverage solutions that cover multi-location sites.

These solutions can be configured to provide closed service for a specific named set of mobile connections, or open to any mobile connection connected to that network.

For an estimate of speeds the Customer may experience when in the UK and connected to the Vodafone and O2 networks, please see the coverage checkers at <https://www.vodafone.co.uk/explore/network/uk-coverage-map/> and <http://www.o2.co.uk/coveragechecker> respectively. If a Customer with 10 or fewer employees (i.e. a small business Customer) experiences speeds that fall below those set out on the coverage checker for an unreasonable period, such Customer may be entitled to a credit.

## 6. Client Support Services

Vivio's dedicated Client Services Team is available during office hours, which are 8:30am – 5:30pm Monday to Friday (excluding bank holidays). Emails are not monitored outside of office hours.

## 7. Orders and lead times

Only authorised personnel may place orders.

Orders for mobile hardware and replacement SIMs received before 5:00pm are normally dispatched the same working day (dependent on stock levels).

Orders for additional mobile connections received by 12 noon are normally delivered the next working day (dependent on stock and the size of order, some additional checks may be required which may increase the stated lead time).

Orders for network amendments by telephone – 95% of requests are completed within 2 working hours. These include:

- PIN unblocking key request
- Barring lost or stolen phones
- SIM activation

Orders for network amendments by email – 95% are completed the same working day but can take up to 24 hours. These include:

- Adding GPRS and MMS
- Barring and unbarring
- Lifting and applying roaming bars

## 8. Network Fault Management

Owing to the nature of telecommunications equipment and software, Vivio cannot guarantee that the Service will be fault-free or without interruption. The quality and the coverage of the Service can be adversely affected by local geography, topography and physical features (such as signal deflection by buildings), atmospheric conditions, the availability and capacity of the networks and the Customer's equipment.

If a fault is reported to Vivio, the relevant support team will log this directly with the relevant network. Regular updates will be supplied as agreed between the Customer and the support team.

## 9. Billing and Invoicing

Invoicing for call charges is in arrears, invoicing for line rental and licensing in advance. Charges for any mobile hardware will be invoiced separately if this is not being deducted from the Customer's Hardware Account or applicable Account Credit.

## 10. Call Data Records

Call data records will be produced for calls, SMS, MMS and data usage made over the mobile Service. A full billing specification will be made available to the Customer monthly.

## 11. Customer Responsibilities and Liabilities

The Customer is responsible for:

- Notifying Alternative as soon as practicable if any hardware or SIM card is lost or stolen
- Using the mobile hardware in association with the specified network
- Not connecting any GSM Gateway product to the network without Vivio's prior written consent

The Customer is liable for any usage, including fraudulent usage from the connections and hardware that Vivio has supplied.

## 12. Regulated Roaming Tariffs

Vivio offers regulated roaming tariffs in accordance with Regulation (EU) No. 531/2012 (as amended) (the "Regulation"). Pricing under the regulated tariffs is as follows (with effect from 1<sup>st</sup> May 2016 and subject to exchange rate variation under the Regulation):

Outgoing voice calls (per minute) Domestic price + 3.60p surcharge, capped at 13.82p

Incoming voice calls (per minute) Domestic price + 0.80p surcharge, capped at 3.60p

Outgoing texts (per text) Domestic price + 1.40p surcharge, capped at 4.30p

Online (data download, per MB) Domestic price + 3.60p surcharge, capped at 14.55p

With effect from 15th June 2017 no surcharge will apply.

Vivio may apply an initial minimum charging period not exceeding 30 seconds to calls made. No fair usage policy is applicable to Vivio's regulated roaming tariffs unless expressly referenced in the Services Agreement.

To protect the Customer against excessive data roaming bills, the monthly volume of downloaded data on a mobile device is capped in Europe and (if Vivio can monitor usage on a real-time basis) worldwide at the equivalent of €50, unless the Customer has agreed otherwise in the Services Agreement.

The above pricing will apply unless the Customer has opted for a specific roaming service or package, and if the Customer opts for one of these services or packages it will lose the advantages of the regulated roaming tariffs. A Customer may switch to and from the regulated roaming tariffs as set out in the Regulations free of charge and without conditions or restrictions related to non-roaming elements of the chosen tariffs, subject to a minimum period of the previous roaming tariff of 2 months.

### **13. Declaration**

I hereby agree to be bound by the Terms & Condition contained in this Vivio Mobile Services Description (including Terms & Conditions) and the accompanying Order Form. I understand that by signing these documents I am entering into a minimum term contract with Vivio for Services as outlined in the Order Form. I confirm that all of the information provided is true or correct and that I am duly authorised to sign on behalf of the organization named.

## Vivio General Terms & Conditions including Vivio Mobile Services

- 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.  
**GSM Gateway:** means any equipment containing a SIM Card which enables the routing of calls from fixed apparatus to mobile equipment by establishing a mobile to mobile call.  
**IMEI Number:** means the unique identifying number allocated to a mobile handset.  
**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.  
**Industry Price Change:** means a variation in charges that occurs during the Minimum Period that is required due to regulator action, or that relates to variations in wholesale pricing adopted collectively by the majority of the UK's mobile network operators.  
**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 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.  
**MDO:** means mobile device optimisation for handsets.  
**Migration:** means a transfer of a telephone number to Vivio from the same Network to which the number is to be connected under the Services Agreement.  
**Minimum Average Monthly Call Spend Per Connection:** means the Customer's monthly minimum expenditure in respect of each Connection (excluding the Monthly Charge and VAT), as specified in the Services Agreement either individually or in aggregate for the Total Connections (in which case the Minimum Average Monthly Call Spend Per Connection shall be such aggregate sum divided by the Total Connections).  
**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.  
**Monthly Charge:** means the monthly rental charge due per Connection in consideration of Vivio providing access to the Network and the Services.  
**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.  
**PAC:** means port authorisation code.  
**Port:** means a transfer of a telephone number to Vivio from a network which is different from the Network to which the number is to be connected under the Services Agreement  
**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.  
**Services Agreement:** means the Services Agreement incorporates these Terms & Conditions, any applicable pricing schedule, Order, service description, Service Specification, statement of work, any addenda or Additional Orders accepted by Vivio.  
**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).  
**Vivio Mobile Services:** means the provision and maintenance of a Connection enabling the Customer to make calls to fixed-line, mobile, non-geographic and international telephone numbers or any other Service provided by Vivio by means of the Network where there is no Network Provider Agreement between the Network Provider and the Customer.
- 1.2 **Construction.** In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
  - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

- (e) in the case of conflict between these Conditions and the Specific Terms the Specific Terms shall take priority; and
- (f) a reference to **writing** or **written** includes faxes and e-mails.

- 2. BASIS OF CONTRACT**
- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Subject to clauses 2.5 and 2.6, and in the event of conflict, the Conditions are to be read in priority to the Specific Terms and any document incorporated by reference and the document higher in the order of precedence will prevail to resolve the conflict.
- 2.5 A provision in the Specific Terms shall override a provision in the Conditions with which it is in conflict if and only if the provision in the Specific Term expressly refers to, and states its intention to override, the provisions of the Conditions.
- 2.6 A Specific Term shall only amend a provision in the Conditions as regards the transaction effected by that Order and shall not amend the Conditions generally or in respect of the transaction effected by any other Order.
- 2.7 Any samples, drawings, descriptive matter or advertising or third party material (including but not limited to tariff or call rate sheets) issued by the Supplier or a Network Provider and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's or a third party's or Network Provider's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 These Conditions apply to the Contract to the exclusion of any other terms other than the Specific Terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.9 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.10 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 3. GOODS**
- 3.1 The Goods are described in the Order as modified by any applicable Goods Specification.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements or the relevant Network Provider.
- 4. DELIVERY OF GOODS**
- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3 Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 3 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and

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| <p>4.8 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.<br/>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.</p> <p><b>5. QUALITY OF GOODS</b></p> <p>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.</p> <p>5.2 If the Customer does not obtain direct from the manufacturer or supplier express warranties about the Goods, the Supplier will use reasonable endeavours, on request and at the Customer's cost, to transfer any transferable warranties the Supplier has for the Goods to the Customer, using the Supplier's standard form.</p> <p>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.</p> <p><b>6. TITLE AND RISK</b></p> <p>6.1 The risk in the Goods shall pass to the Customer on completion of delivery.</p> <p>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.</p> <p>6.3 Until title to the Goods has passed to the Customer, the Customer shall:</p> <p style="margin-left: 20px;">(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;</p> <p style="margin-left: 20px;">(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;</p> <p style="margin-left: 20px;">(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;</p> <p style="margin-left: 20px;">(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</p> <p style="margin-left: 20px;">(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.</p> <p>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:</p> <p style="margin-left: 20px;">(a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and</p> <p style="margin-left: 20px;">(b) the Supplier may at any time:</p> <p style="margin-left: 40px;">(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and</p> <p style="margin-left: 40px;">(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.</p> <p><b>7. SUPPLY OF SERVICES</b></p> <p>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 Goods 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>7.6 The Supplier shall have the right to substitute the Services provided where there is no negative material effect to the nature or quality of the Services and the Supplier shall notify the Customer in any such event. Such changes may include but are not limited to the substitution of any Services provided under a Network Provider Agreement with Vivio Mobile Services which shall then be governed solely by these terms and incorporated documents.</p> <p><b>8. CUSTOMER'S OBLIGATIONS</b></p> <p>8.1 The Customer shall:</p> <p style="margin-left: 20px;">(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;</p> <p style="margin-left: 20px;">(b) co-operate with the Supplier in all matters relating to the Services;</p> <p style="margin-left: 20px;">(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;</p> | <p>(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;</p> <p>(e) prepare the Customer's premises for the supply of the Services;</p> <p>(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;</p> <p>(g) keep and maintain all materials, equipment, documents and other property of the Supplier (<b>Supplier Materials</b>) 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</p> <p>(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;</p> <p>(i) comply with its obligations pursuant to the Contract and the Network Provider Agreement.</p> <p>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.</p> <p>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.</p> <p>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 (<b>Customer Default</b>):</p> <p style="margin-left: 20px;">(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;</p> <p style="margin-left: 20px;">(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</p> <p style="margin-left: 20px;">(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.</p> <p>8.5 In relation to the use of Vivio Mobile Services the Customer agrees:</p> <p style="margin-left: 20px;">(a) to use the Services in accordance with all Laws and any direction of OFCOM or other competent authority;</p> <p style="margin-left: 20px;">(b) to use the Services in accordance with the Services Agreement and such other conditions or instructions as may be imposed from time to time by Law or Vivio's supplier;</p> <p style="margin-left: 20px;">(c) not to cause any attachments other than those approved by Law to be connected to the Services;</p> <p style="margin-left: 20px;">(d) not to make or attempt to make fraudulent, improper, or immoral use of the Services, nor to use or attempt to use the Services in breach of any Law or with the intent to avoid the payment, in whole or in part, or any charges; and</p> <p style="margin-left: 20px;">(e) not to resell the Services, except to members of its Group from time to time. The Customer shall be responsible for any act, omission or breach of the Services Agreement by members of its Group as if it were committed by the Customer.</p> <p>8.6 The Customer permits Vivio to use information about the use of the Services by the Customer (including origin, destination, duration, route and time of calls) to perform its obligations under the Services Agreement, maintain or upgrade the Service and produce anonymised statistics to assist Vivio or Vivio's suppliers in their network and business planning. Vivio may also share such information with its suppliers for fraud prevention purposes.</p> <p><b>9. CHARGES AND PAYMENT</b></p> <p>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.</p> <p>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:-</p> <p style="margin-left: 20px;">(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;</p> |
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- (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 a 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;
- (b) the performance or failure to perform by the Network Provider of its obligations pursuant to the Network Provider Agreement.
- 13.5 The Customer acknowledges that, owing to the nature of telecommunications equipment and computer software, the Services will not be fault-free or without interruption and that the quality and coverage of the Services may be adversely affected by local geography, topography and physical features (such as signal deflection by buildings), atmospheric conditions, the availability and capacity of the Network or other networks (which will be shared with other users) in the Customer's (or the users of the Services') equipment, the Customer Blackberry Equipment or the RIM Data Relay.
- 13.6 Vivio shall have no Liability for any loss or damage sustained by the Customer relating to any of the following:
- (a) the security of the Customer's (or the users of the Services') equipment, the Customer Blackberry Equipment, the Internet, 'WAP' sites, web content servers, applications or public networks;
- (b) any loss, or lack or failure of security, of data transmitted or received using the Services;

- (c) any use of Software in relation to the Services which is not approved for use with the Services by Vivio;
- (d) any incompatibility of the Customer's (or the Services users') equipment with the Services, and the Customer shall Indemnify Vivio against any such incompatibility; or
- (e) any matter referred to in clause 13.5
- 13.7 Vivio shall have no Liability for any cost arising from fraudulent use of the Services and the Customer shall be liable for any costs relating to any use of the Services (including telephone calls).
- 13.8 If the Customer notifies Vivio of a claim in respect of a failure by Vivio to provide a Service in accordance with the Services Agreement, and the Customer then agrees a new minimum term period with Vivio in respect of that Service, that agreement shall be in full and final settlement of the Customer's claim and the Customer shall be deemed to have irrevocably waived its rights in relation to that claim.
- 13.9 This clause 13 shall survive termination of the Contract.
- 14. TERMINATION**
- 14.1 Subject to clauses, 8.3 and 14.2, the Contract shall commence on the Commencement Date and shall continue until either party gives the other party not less than 30 days' written notice, such notice not to expire prior to the end of the Minimum Period.
- 14.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(b) to clause 14.2(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 14.5 Without prejudice to any of Vivio's other rights and remedies, Vivio may no notice to the Customer disconnect any or all of the Services or suspend performance of any or all of its obligations under, or terminate, the Services Agreement in the following circumstances without liability:
- (a) if any license or permission to operate or use the Network or any part of it is revoked or terminated for any reason;
- (b) if the operation of the Network is terminated or if the provision of the Services to Vivio is discontinued for any reason;
- (c) if the Customer does or allows to be done anything which in Vivio's reasonable opinion will or might jeopardise the operation of the Services or the Network; or
- (d) if Vivio reasonably suspects the Services are being used in a manner prejudicial to the interests of the Customer or Vivio
- 14.6 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) 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) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15. FORCE MAJEURE**
- 15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service, Network Provider or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, subcontractors or Network Providers.
- 15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 2 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 16. DATA PROTECTION**
- 16.1 The following definitions apply:
- (a) Data Protection Legislation means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
- (b) the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "processing" bear the respective meanings given them in the Data Protection Legislation.
- (c) Data includes personal data.
- (d) Customer Personal Data and Supplier Personal Data mean any Personal Data provided by or on behalf of the Customer or the Supplier, respectively.
- 16.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 16.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor.
- 16.4 Without prejudice to the generality of clause 16.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 16.5 Without prejudice to the generality of clause 16.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability

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|            | 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);  |            | or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.  |
|            | (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and  |            | (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.  |
|            | (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:  | 17.4       | <b>Waiver.</b> 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. |
|            | (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;  | 17.5       | <b>No partnership or agency.</b> 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.   |
|            | (ii) the data subject has enforceable rights and effective legal remedies;   | 17.6       | <b>Third parties.</b> A person who is not a party to the Contract shall not have any rights to enforce its terms.  |
|            | (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  | 17.7       | <b>Variation.</b> 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.   |
|            | (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;   | 17.8       | <b>Governing law.</b> 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.  |
|            | (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;   | 17.9       | <b>Jurisdiction</b> 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).  |
|            | (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;   | <b>18.</b> | <b>SUSPENSION OF SERVICES</b>  |
|            | (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  | 18.1       | Vivio may suspend any or all of the services, or performance of its obligations under any or all of the Services Agreements, in the following circumstances without liability:   |
|            | (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.  |            | (a) With prior notice where reasonably practicable, if Vivio is obliged to comply with an order, instruction or request of Government, an emergency services organisation or other competent administrative authority;   |
| 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.                          |            | (b) On notice, if Vivio reasonably believes that any member of the Customer's Group will not make payment which is to fall due to the Vivio's Group under any Group Agreement; or  |
| 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).  |            | (c) On notice, if a Credit Limit is exceeded.  |
| 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.  | 18.2       | (d) during any technical failure, modification, repair, testing or maintenance of the Network or other equipment by which the Services are provided, or in the case of emergency of for supplier operational reasons; or   |
| <b>17.</b> | <b>GENERAL</b>   | 18.3       | (e) if the operation of the Network is suspended or if the provision of the Services to Vivio is suspended for any reason (including during any network 'freeze' period)   |
| 17.1       | <b>Assignment and other dealings.</b>  |            | 18.2 The Customer shall remain liable for the Monthly Charges for the Services for the duration of any suspension.   |
|            | (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.   | 18.3       | Vivio shall have no Liability to the Customer for any charges incurred by the Customer for the use of other telecommunications services whether provided by Vivio or any other person during any period of suspension of the Services under the Services Agreement.  |
|            | (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.  | <b>19.</b> | <b>USE OF HANDSETS AND SIM CARDS</b>   |
| 17.2       | <b>Notices.</b>  | 19.1       | The Customer shall:  |
|            | (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. |            | (a) Notify Vivio as soon as practical if it is aware that any handset or SIM Card is lost or stolen;   |
|            | (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.  | <b>20.</b> | (b) Use the handsets supplied under the Services Agreement only in respect of the Network;   |
|            | (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action   | 20.1       | (c) Use any handset and SIM Card provided by Vivio for use together only in conjunction with each other and not with any other SIM Card or handset; and  |
| 17.3       | <b>Severance.</b>  |            | (d) not connect, or continue connection, to the Network of any GSM Gateway without Vivio's prior written consent (at Vivio's absolute discretion and subject to such terms and conditions as Vivio may in its absolute discretion specify. Vivio reserves the right to amend any such terms and conditions from time to time on fourteen 7 days' notice to the Customer).  |
|            | (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  | 20.1       | <b>MINIMUM USAGE</b>   |
|            |  | 20.2       | In consideration of AN providing the Services in accordance with the Services Agreement, the Customer agrees to:   |
|            |  |            | (a) Meet or exceed the total connections;  |
|            |  |            | (b) Use each Service until expiry of the Minimum Period; and   |
|            |  |            | (c) Meet or exceed the Minimum Average Monthly Call Spend Per Connection for each Connection during each month of the Minimum Period. For the avoidance of doubt any expenditure after expiry of the Minimum Period shall not contribute to the Minimum Average Monthly Call Spend Per Connection.   |
|            |  | 20.2       | If at any point during, or on expiry of, a Minimum Period the actual spend for a connection (excluding the Monthly Charge and VAT) in any month of the Minimum Period is below the Minimum Average Monthly Call Spend Per Connection, Vivio may exercise any or call of the following rights:  |
|            |  |            | (a) Charge the Customer the difference between them;   |
|            |  |            | (b) Adjust the pricing; and  |
|            |  |            | (c) Require the Customer to reimburse a pro-rata portion of any related Credit.  |
|            |  | 20.3       | The Customer's obligations under clause 20.1 shall not be affected by any delay or failure in the transfer to Vivio of any telephone number whether caused by the Customer, the Previous Service Provider, any third party or any Force Majeure Event.   |

20.4 Without prejudice to any of AN's other rights and remedies, within thirty (30) days of the Agreement Date:

- (a) the Customer shall obtain PACs for the telephone numbers specified in the Services Agreement from the Previous Service Provider, and provide them to Vivio, to enable the relevant telephone numbers to be transferred to Vivio; and
- (b) if the Total Connections is not achieved (through no act or omission of Vivio), the transfer of any telephone number to Vivio is a Migration when stated in the Services Agreement to be a Port, or the parties agree after the Agreement Date to reduce the Total Connections by more than 10%, then Vivio may reduce any related Credit and adjust the pricing at its reasonable discretion.

20.5 The Minimum Average Monthly Call Spend Per Connection shall be unaffected by any variation in the charges under the Services Agreement, including by an Industry Price Change, or by the transfer of any part of the Services to a third party service provider pursuant to Law. Following an Industry Price Change, if requested by the Customer, Vivio shall:

- (a) undertake call analysis of the Customer's usage of the Services by minutes and by cost;
- (b) discuss with the Customer its telecommunications requirements and usage generally; and
- (c) provide to the Customer alternative terms for its continued use of the Services, including charges, Credits, Minimum Average Monthly Call Spend Per Connection and Minimum Term.

## 21. INTERNET ACCESS AND SOFTWARE

21.1 The Services may be used by the Customer to link into web sites, resources and networks worldwide. Vivio neither accepts responsibility for their content or any services offered nor endorses their content. The Customer agrees to comply with the terms and conditions and acceptable use policies of such web sites, resources and networks.

21.2 Where Internet access forms part of the Services, the Customer agrees that:

- (a) all visual, textual or other information, whether publicly posted or privately transmitted ("Information") is the sole responsibility of the person from whom such Information originated;
- (b) the Customer is entirely responsible for all Information uploaded, downloaded, emailed or otherwise transmitted via Internet access;
- (c) all dealings with, and interests in, promotions, services or merchants found by the Customer using the Services, unless otherwise stated, are solely between the Customer and the person with whom the Customer is dealing; and
- (d) access to secure financial transactions will be dependent on the type of hardware and the third party supplier of content.

21.3 Vivio shall not be liable for advice, instructions or directions which it gives to the Customer where the Services are used to link into web sites, resources or networks worldwide. Such advice, instructions and directions may relate, without limitation, to configuration of the Services on hardware of the Customer.

21.4 Any software provided in conjunction with the Equipment or Service is and shall remain the property of the licensor and (if no licence is provided in conjunction with the software) the Customer is granted a non-exclusive, non-transferable licence to use the software solely in conjunction with the relevant Equipment and Service (as applicable). The Customer shall neither copy the software, make modifications to nor attempt to reverse engineer or decompile the software except to the extent permitted by Law, and shall comply with the relevant licence.

## 22. ADDITIONAL ORDERS AND AUTHORITY

22.1 The Customer may place an Additional Order via e-mail or via other electronic means as specified by Vivio from time to time. Each accepted Additional Order shall be subject to, and shall form part of, the Services Agreement.

22.2 Vivio shall have no obligation to confirm whether an e-mail was validly sent by the Customer if it appears to originate from the Customer's Internet domain name.

22.3 The Customer warrants that 'authorised contacts' specified in the Services Agreement or entered on any Vivio website by the Customer are authorised to enter into Additional Orders on behalf of the Customer.

22.4 The Customer shall keep secure any password provided by Vivio and acknowledges that any instruction given to Vivio by a person using this password shall be deemed to have been made by the Customer.

## 23. VARIATION

23.1 Vivio may vary a Services Agreement, or introduce changes or updates to the Services, as required by its suppliers or to take account of changes in Law by giving notice to the Customer. Except as expressly permitted under the Services Agreement, any other variation to a Services Agreement shall be in writing and signed by a duly authorised representative of each party.

## 24. DATA USAGE

24.1 The customer acknowledges and agrees that the Network Operators CDR's shall constitute proof of data usage without further detail of Customer's activity relating to such data use.

## 25. COVERAGE

25.1 For an estimate of speeds Customer may experience in the UK, the Customer has to refer to the Network Operator's coverage checker at <https://www.vodafone.co.uk/explore/network/uk-coverage-map/or> <https://www.o2.co.uk/coverage>. If a Customer with 10 or less employees (a small business Customer) experiences speeds that fall below those set out on the Network Operator's coverage checker for an unreasonable period, the Customer may be entitled to a credit.

## 26. HOW WE USE YOUR PERSONAL DATA

26.1 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.

26.2 **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.

26.3 **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

26.4 **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.

26.5 **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.

26.6 **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.

26.7 **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

26.8 **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](http://www.vivio.co.uk/sar) and then email it to us at [mydata@vivio.co.uk](mailto:mydata@vivio.co.uk). We will provide the information to you within a month of you asking for it.

26.9 **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.

26.10 **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](mailto:accesscoinformation@ico.org.uk)

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