

## VOICE 2 VOICE LTD

### TERMS AND CONDITIONS FOR HOSTED DESKTOP & HOSTED TELEPHONY SERVICES

#### 1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions ("Terms") the following words shall have the following meanings:

<i>Acceptable Use Policy</i>	<i>the acceptable use policy in force from time to time that sets out the terms upon which you may use the Services;</i>
<i>Agreement</i>	<i>the agreement between you and V2V for the supply of the Services in accordance with the Order and these Terms;</i>
<i>Authorised Provider</i>	<i>V2V's authorised third party provider of the Services or Support Services;</i>
<i>Emergency Centre</i>	<i>the premises where operators answer Emergency Calls;</i>
<i>Call</i>	<i>a signal, message or communication which can be silent, visual or spoken, excluding text messages;</i>
<i>Charges</i>	<i>the charges as notified to the Customer from time to time and payable by the Customer to V2V for the Services;</i>
<i>Commencement Date</i>	<i>the date of the Agreement;</i>
<i>Confidential Information</i>	<i>any and all information whether disclosed in written or oral or machine-readable form or otherwise including without limitation information relating to V2V's services, equipment, operations, know-how, trade secrets and information of commercial value;</i>
<i>Configuration Portal</i>	<i>the web based portal used by the Customer to create and manage telephone features;</i>
<i>Connect To Number</i>	<i>the contact number used to connect to the relevant Emergency Services Organisation;</i>
<i>Customer, you</i>	<i>the individual, company, entity, organisation or business that purchases the Services from V2V;</i>
<i>Customer Data</i>	<i>data inputted or supplied by the Customer for, or in the use of, the Services;</i>
<i>Customer Information</i>	<i>any documents or other materials and any data or other information provided by the Customer relating to the Services;</i>
<i>Customer IT</i>	<i>any components of the Customer's IT infrastructure (including but not limited to cabling, systems, hardware and software);</i>

GDPR

*the General Data Protection Regulations 2018;*

*Early Termination Fee*

*means:*

*(i) all Charges that are accrued up to and including the date of termination; plus  
(ii) an average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus  
(iii) the total amounts of all Rental Charges still remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);*

*Emergency*

*a serious situation or occurrence that demands immediate action;*

*Emergency Call*

*a Call to 999;*

*Emergency Calls Access*

*the service conveying Emergency Calls as described in Clauses 3.10 to 3.14 inclusive and which forms part of the Services;*

*Emergency Services Database or ESDB*

*the 999 call routing and address database;*

*Emergency Services Organisation*

*the relevant local public police, fire, ambulance and coastguard services and other similar organisation providing assistance to the public in emergencies;*

*Incoming Calls*

*calls from the destinations with E.164 numbers made to the Customer;*

*International Destination Network*

*a network operated in an overseas country;*

*IP*

*internet protocol;*

*IPR*

*patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of*

*protection which subsist or will subsist now or in the future in any part of the world;*

<i>Minimum Term</i>	<i>Thirty-six (36) months (or such other minimum period as is set out in the Order) from the Commencement Date;</i>
<i>Ofcom</i>	<i>the Office of Communications or other replacement authority;</i>
<i>Order Outgoing Calls</i>	<i>the Customer's order for the Services; calls from the Customer to destinations outside of the Customer's Service subject to the restrictions set out in Clauses 3.7 to 3.11 inclusive;</i>
<i>Personal Data PRS or Premium Rate Service</i>	<i>personal data, as defined in the GDPR; a communications service where Call charges include a premium to cover the cost of content and/or an element of the service above the costs and charges attributable to conveyance;</i>
<i>Renewed Term</i>	<i>the renewed term agreed with V2V in writing in accordance with Clause 9.2;</i>
<i>Rental</i>	<i>the monthly fee (including line rental, equipment rental, and other rental) payable by the Customer for the Services, as set out in the Order or as otherwise notified by V2V;</i>
<i>Services</i>	<i>the hosted email, hosted telephony and / or hosted desktop and other managed IT services as set out in the Order that V2V agrees to supply to the Customer;</i>
<i>Service Levels</i>	<i>the standard of performance in respect of the provision of the Services set out in the Schedule;</i>
<i>V2V, We</i>	<i>VOICE 2 VOICE LTD(Company Number: 4785166) whose Registered Office is at Suite 9, Lakhpur Court, Staffordshire Technology Park, Stafford, Staffordshire, ST18 0FX;</i>
<i>Subsequent Term</i>	<i>a minimum of twelve (12) months (or such other period set out in the Order);</i>
<i>Support Services</i>	<i>the support services provided by V2V or its Authorised Provider in connection with the Services;</i>
<i>Working Day</i>	<i>09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom.</i>

*1.2. Construction. In these Terms, the following rules apply:*

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

*1.2.2. a reference to writing or written includes faxes and e-mails.*

*1.2.3. a reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.*

*1.2.4. headings in the Agreement shall not affect interpretation.*

## **2. ORDERS**

*2.1. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Terms.*

*2.2. Within 5 days of receipt of an Order or such other time as agreed with the Customer, V2V or its Authorise Provider shall carry out a feasibility check and audit of the Customer's system and/or software.*

*2.3. If, after carrying out a feasibility check and audit of the Customer's system and/or software V2V or its Authorise Provider determines that:*

*2.3.1. the Customer's system and/or software does not pass the feasibility check and audit it may reject the Order;*

*2.3.2. the Customer's system and/or software passes the feasibility check and audit it may accept the Order.*

*2.4. If the Customer's system and/or software passes the feasibility check the Order shall only be deemed to be accepted when V2V issues written acceptance of the Order or (if earlier) V2V provides the Services to the Customer at which point and on which date the Agreement shall come into existence (Commencement Date).*

*2.5. Once an Order has been accepted by V2V, the Customer may not cancel an Order.*

*2.6. V2V may accept or reject an Order at its sole discretion.*

*2.7. The Agreement 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 V2V which is not set out in the Agreement.*

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

### **3. SUPPLY OF SERVICES**

3.1. V2V shall supply the Services to the Customer from the Commencement Date for the Minimum Term and any Renewed Term or Subsequent Term in accordance with these Terms.

3.2. The Customer acknowledges that it has limited rights to terminate the Agreement during the Minimum Term, Renewed Term or Subsequent Term (as the case may be). These rights are set out in Clause 9.5. If the Customer terminates the Agreement before the expiry of the Minimum Term, Renewed Term or Subsequent Term, the Customer shall pay any applicable Early Termination Fee.

3.3. Unless otherwise agreed with V2V in writing, the Services will be provided in the United Kingdom.

3.4. V2V 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 V2V shall notify the Customer in any such event.

3.5. V2V warrants to the Customer that the Services will be provided using reasonable care and skill.

3.6. V2V does not warrant that the Services will be available without interruption or will be error free.

3.7. The Customer acknowledges that:

3.7.1. V2V's ability to perform its obligations under the Agreement is dependent upon the Customer's full and timely cooperation with V2V as well as the accuracy and completeness of any Customer Information the Customer provides to V2V. V2V shall not be responsible or liable for any delay in providing the Services which arises directly out of the Customer or Customer's failure to perform its obligations hereunder or to co-operate with V2V or to provide complete and accurate Customer Information, all in a timely manner;

3.7.2. unless otherwise agreed by V2V in writing, the Services have not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements;

3.7.3. V2V shall not be liable or responsible for any delays, delivery failures or any loss or damage arising out of or resulting from the transfer of data including but not limited to Customer Data, over communications networks and facilities (including the internet) unless caused by an act or omission of V2V;

3.7.4. the Services may be subject to limitations, delays and other problems arising out of the use of such communications networks and facilities;

3.7.5. *the Services are not designed to be a carrier interconnect and that the platform for this Service will not support diallers of any description;*

3.7.6. *scheduled downtime will occur from time to time. V2V will use its reasonable endeavours to provide the Customer with at least three (3) Working Days' notice of any scheduled downtime;*

3.7.7. *the existence of any minor errors in the Services shall not constitute a breach of the Agreement;*

3.7.8. *some technical limitations with the Services may not become apparent until after the Services have been installed and working for some time;*

3.7.9. *the Services do not support conveyance of calls to International Destination Networks;*

3.7.10. *whilst the Services include capabilities which enables it to adhere to regulations including PCI (Payment Card Industry) for card payments, and Ofcom for outbound diallers, neither V2V or its Authorised Providers will be responsible for compliance to any such regulations by the Customer;*

3.7.11. *it is their responsibility to ensure compliance with the requirements of the telephone preference service. V2V shall not be responsible for such compliance by the Customer;*

3.7.12. *use of the Services, may carry certain security risks to the systems and networks of the Customer, V2V and third parties including, but not limited to: misuse; unauthorized access; alterations; theft; fraud; destruction; corruption; and attacks (Occurrences). The Customer will, at its own expense, take security measures including but not limited to the use of firewalls, passwords, access restrictions, encryption, policies, and physical access restrictions, to protect from Occurrences all, equipment, software, data and systems located on the Customer's premises or otherwise in the Customer's control and used in connection with the Services, whether owned by the Customer, V2V, or V2V's suppliers. The Customer is responsible for all security measures, even if the Customer uses a third party or V2V to configure and implement them;*

3.7.13. *V2V may occasionally suspend the Service for operational reasons (such as maintenance or Service upgrades), major service outages or because of an Emergency, but will use its reasonable endeavours to give the Customer as much notice as possible; and*

3.7.14. *V2V or its Authorised Provider may at any time and without liability modify, expand, improve, maintain or repair the Services and this may require suspension of the operation or provision of the Services and V2V shall have no liability to the Customer in connection with any such adverse effect on the quality and availability of the Services.*

3.8. *The Customer will be able to make Calls to any destination unless Call barring has been set up, via the Configuration Portal, in relation to Calls to particular numbers or destinations.*

3.9. *If abnormally high Call volumes are conveyed via the Services for onward termination to an International Destination Network, V2V or V2V's Authorised Provider may instigate network management control measures including but not limited to Call barring.*

3.10. *The Services will not support the following Call types:*

3.10.1. *Outgoing Calls to*

3.10.1.1. *Non-E164 PSTN numbers for calls terminating outside of the UK;*

3.10.1.2. *070 personal numbering services;*

3.10.1.3. *dial up internet services; and*

3.10.1.4. *video calls that require IP to TDM translation.*

3.10.1.5. *1XX, 1XXX and 1XXXX codes (excluding directory enquiry services);*

3.10.1.6. *Premium Rate Services,*

3.10.2. *Incoming Calls to 070 personal numbering services; and*

3.10.3. *short message service and text messaging.*

#### *Emergency Call Access*

3.11. *An Emergency Call Service will only be available where the Emergency call originates from a calling party located in the UK having a telephone number conforming to the National Telephone Numbering Plan, as set out on the Ofcom website, and being either from a geographic number range or from non-geographic number ranges with a prefix of: 055, 056, 03 or 08.*

3.12. *Subject to the provisions of this Clause, where Emergency Calls are conveyed to the Service platform, V2V or its Authorised Provider will use reasonable endeavours to:*

3.12.1. *convey Emergency Calls to one of the relevant Emergency Centres;*

3.12.2. *provide the Customers geographic address locations to the Emergency Services Database, based on the information provided by the Customer in the Order;*

3.12.3. *if the geographic location of the Emergency Call can be sufficiently identified, provide an onwards connect service to the relevant Emergency Services Organisation via an Emergency Centre telephone operator by means of two-way voice telephony;*

3.12.4. liaise and co-operate with the Customer in attempting to resolve problems that may arise; and

3.12.5. assist the Emergency Services Organisations with requests for call-trace in an attempt to identify the geographic location of the Emergency Call and the Customer telephone number if not automatically provided.

3.13. If V2V or its Authorised Provider receives an Emergency Call for which it is not possible to clearly confirm the geographic location and appropriate Connect To Number, or the information is incorrect or corrupted, V2V or its Authorised Provider will use reasonable endeavours to convey the Call to a Connect To Number for the appropriate Emergency Services Organisation.

3.14. V2V does not warrant that the Services is, or will be, free from faults, however, V2V or its Authorised Provider will correct faults with the Services which affect Emergency Calls in accordance with V2V or its Authorised Provider's normal engineering practices.

3.15. V2V will supply to the Customer an annual audit file which lists the name and address details of the Customers individual users by telephone number, which are held for 999 verification.

3.16. A fair usage policy will apply to the Services with regards to the number of voice channels available.

3.17. V2V's employees, agents, Authorised Provider's or sub-contractors are not authorised to make any representations concerning the Services unless confirmed by V2V in writing.

3.18. Any advice or recommendation given by V2V or its employees, agents, Authorised Provider's or sub- contractors to the Customer or its employees or agents as to the Services (whether under clause 3.6 or generally) which is not confirmed in writing by V2V is followed or acted on entirely at the Customer's own risk, and accordingly V2V shall not be liable for any such advice or recommendation which is not confirmed in writing.

#### **4. V2V'S OBLIGATIONS**

4.1. V2V shall use reasonable endeavours to meet any performance dates agreed in writing, but any such dates shall be estimates only. V2V shall not be liable for failure to meet them and time shall not be of the essence for performance of the Services.

4.2. V2V may:

4.2.1. change or withdraw some, or part, of the Services from time to time. This may be because of changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content; and

4.2.2. determine how the Services are presented and delivered or are otherwise made available to the Customer. V2V can change the means or method of providing the Services or the way they are presented, delivered or



*otherwise made available to the Customer at any time provided that the altered Services shall meet the Service Levels.*

*4.3. V2V shall give the Customer not less than 1 months' notice in writing of any decision to vary the Services ("Notice of Variation") or discontinue the supply of all or any of the Services ("Notice of Discontinuance"). V2V shall use its reasonable endeavours not to vary or cease to provide any service during the term of the Agreement.*

*4.4. In the event that V2V serves a Notice of Variation or Notice of Discontinuance upon the Customer, V2V or its Authorised Provider will continue to provide those Services that are being varied or discontinued and technical support in accordance with Clause 6 during the notice period set out in the Notice of Variation or Notice of Discontinuance.*

*4.5. V2V shall be entitled (at its discretion) to make changes to the Service at any time without notice in order to comply with any safety or legal requirement applicable to the Services.*

*4.6. Within fourteen (14) days of receipt of a Notice of Variation or Notice of Discontinuance, the Customer has the right to terminate this Agreement on fourteen (14) days' written notice to V2V if such variation or discontinuance of the Services has a material adverse effect on the Customer's use of the Services.*

## **5. THE CUSTOMER'S OBLIGATIONS**

*5.1. The Customer may only use the Services:*

*5.1.1. in accordance with the Agreement;*

*5.1.2. in accordance with any instructions provided to the Customer by V2V from time to time; and*

*5.1.3. for their own internal business use.*

*5.2. The Customer may not resell or commercially exploit any of the Services or content without the prior written consent of V2V.*

*5.3. The Customer shall:*

*5.3.1. ensure that the terms of the Order are complete and accurate;*

*5.3.2. ensure that it is aware of and accepts any Acceptable Use Policy before using the Services and observes the Acceptable Use Policy at all times during the term of the Agreement;*

*5.3.3. ensure that, prior to the Commencement Date, adequate virus protection software is installed on all computer systems to which V2V will require access for the purpose of performing the Services;*

5.3.4. ensure that it provides all Customer Information required by V2V and that all such Customer Information shall be accurate, full and provided in a timely manner;

5.3.5. afford to V2V all access and facilities that V2V shall reasonably require when attending the Customer's premises;

5.3.6. ensure that its equipment, IT infrastructure and connectivity shall be adequate to enable V2V to efficiently provide the Services;

5.3.7. ensure that V2V shall have such remote and other access to the systems and infrastructure of the Customer as it shall require to provide the Services;

5.3.8. enter into and maintain contracts directly with such third party providers as may be necessary to enable V2V to provide the Services and ensure that such contracts permit V2V to request resources directly from each provider on behalf of the Customer when required;

5.3.9. keep in place software maintenance agreements with the providers of all supported software applications used by the Customer to ensure adequate assistance from such vendors if required;

5.3.10. take all reasonable precautions to protect the health and safety of V2V's personnel, agents, Authorised Providers and sub-contractors whilst at the Customer's premises;

5.3.11. ensure that it is the owner of or is entitled to use all the Customer IT and equipment which is the subject of the Services to be provided by V2V (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment), or that it is authorised by the owner thereof to make them available to V2V if necessary;

5.3.12. ensure that any equipment connected (directly or indirectly) to or used with the Services is compatible with the Service and where applicable be on the authorised equipment list provided by V2V from time to time. Any equipment not listed as authorised equipment by V2V, where applicable, will not be supported by the Services;

5.3.13. ensure that the details of the existing hardware and software it uses and all current licenses it holds for software are complete and accurate;

5.3.14. ensure that any software, documentation or manuals (if any) provided by V2V to the Customer to enable the Customer to receive and use the Services, are used for the Customer's internal use only and, except as permitted by applicable law or as expressly permitted under the Agreement the Customer will not, without V2V's prior written consent, copy, de-compile or modify any software, nor copy the manuals or documentation relating to that software, nor knowingly allow or permit anyone else to do so;

*5.3.15. ensure that all Customer Information and any Customer Data provided by it or stored on, or processed by, the servers of V2V shall not be obscene, defamatory, likely to result in any claim being made against V2V by any third party, or in breach of the Acceptable Use Policy;*

*5.3.16. not use the Services and will take all reasonable steps to ensure that the Services are not used by anyone:*

*5.3.16.1. to send, knowingly receive, upload, download, use or re-use material which is offensive, indecent, defamatory, obscene or menacing;*

*5.3.16.2. contrary to any instructions given by V2V under clause 5.1.2;*

*5.3.16.3. in a way that does not comply with the terms of any legislation or any licence applicable to the Customer;*

*5.3.16.4. in a manner that is in any way unlawful, fraudulent or in bad faith or, to the knowledge of the Customer, has any unlawful, fraudulent or bad faith purpose or effect;*

*5.3.16.5. in a manner that in V2V's reasonable opinion could materially affect the quality of the Services, or any other services, provided by V2V;*

*5.3.16.6. in a manner which is contrary to Clause 13; or*

*5.3.16.7. in a manner that that could reasonably be believed to have a detrimental effect on V2Vs brand or reputation.*

*5.3.17. keep confidential and secure any user names and passwords provided or enabled by V2V and use them strictly in accordance with any instructions issued by V2V;*

*5.3.18. comply with all rules, regulations, legislation, statutes and laws that are applicable to the Services;*

*5.3.19. comply with all reasonable policies, procedures and practices applicable to the Services and as notified to it by V2V in writing from time to time;*

*5.3.20. indemnify V2V against any losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against V2V as a result of;*

*5.3.20.1. the Customer's breach of this Clause 5.3;*

*5.3.20.2. system outages arising out of or in connection with the Customer's breach or non-performance of the Acceptable Use Policy;*

*5.3.20.3. use by the Customer of the Services that causes damage to, interrupts or otherwise prevents V2V from supplying the Services to*

*other customers or complying with obligations owed to other customers;*

*5.3.20.4. any use of the Services by the Customer that promotes or assists any illegal activity.*

*5.3.21. co-operate with and follow V2V's reasonable instructions to ensure the proper use and security of the Services;*

*5.3.22. permit V2V to use Customer Information for credit checking and debt collection (including diV2Vosure to and use by third parties acting for V2V) and any other uses and diV2Vosures permitted under the GDPR and will allow V2V to diV2Vose such information to the extent that V2V is required to do so by law or any relevant authority.*

*5.4. If V2V's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):*

*5.4.1. V2V 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 V2V's performance of any of its obligations;*

*5.4.2. V2V shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from V2V's failure or delay to perform any of its obligations under the Agreement; and*

*5.4.3. the Customer shall reimburse V2V on written demand for any costs or losses sustained or incurred by V2V arising directly or indirectly from the Customer Default.*

*5.5. The Customer shall own all rights, title and interest in and to the Customer Information and Customer Data and shall have sole responsibility for its legality, reliability, integrity, accuracy and quality.*

*5.6. Neither V2V nor its Authorised Provider shall not be responsible for any loss, destruction, alteration or diV2Vosure of Customer Data except to the extent caused by V2V's negligence. Notwithstanding any other provision, V2V shall be entitled (but not obliged) to remove and/or delete (in its absolute discretion) any Customer Data which it considers does not conform to the Acceptable Use Policy.*

## **6. SUPPORT SERVICES**

*6.1. V2V or its Authorised Provider shall provide 1st line support to the Customer for the Services as follows:*

*6.1.1. a help desk support facility to the Customer for first line technical support free of charge and in doing so, V2V's Authorised Provider may liaise with the Customer in order to fulfil its obligations under this Clause;*

*6.1.2. remote engineer support; and*

6.1.3. visits to the Customer's sites at times convenient to V2V or its Authorised Provider, such visits to be free of charge in the event that the visit is the result of a fault by V2V, its Authorised Provider or its employees or agents. If the visit is not the result of a fault by V2V, its Authorised Provider or its employees or agents fault then V2V may charge for the visit in accordance with its then current table of charges.

6.2. The Customer shall immediately report any fault to V2V's Customer Services Department and provide details of the fault where it will be dealt with in accordance with the agreed fault repair service or the applicable Service Levels. V2V shall not be obliged to fix any fault if:

6.2.1. the fault arises because the Customer failed to follow any user manual or other documentation available from the Authorised Provider or V2V's oral or written instructions as to the use of the Services or (if there are none) good trade practice;

6.2.2. the defect is caused by improper use of the Services or use outside its normal application.

6.3. If V2V agrees to fix a fault:

6.3.1. caused by the circumstances set out in Clause 6.2; or

6.3.2. caused by the Customer; or

6.3.3. that otherwise falls outside the responsibility of V2V; or

6.3.4. where no fault is subsequently found

V2V may charge the Customer for such work at its applicable man-hour rate.

## **7. CHARGES AND PAYMENT**

7.1. The Customer shall pay the Charges.

7.2. V2V will invoice the Customer monthly in advance and the Customer shall pay the full amount invoiced by direct debit within fourteen (14) days of the date of invoice.

7.3. The Customer shall pay the Charges in pounds sterling without set-off or deduction.

7.4. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.

7.5. Time for payment of the Charges shall be of the essence of the Agreement.

7.6. If the Customer fails to make payment in full by the due date, in addition to V2V's right to suspend the Services as set out in Clause 8.1, V2V may:

7.6.1. withdraw passwords, accounts and/or access to the Services;

*7.6.2. charge interest at the rate of 4% per annum above the base rate of the National Westminster Bank plc on any amounts outstanding from the due date for payment until payment is made in full.*

*7.7. In the event that:*

*7.7.1. V2V follows instructions with or from the Customer to upgrade or amend the Services; or*

*7.7.2. V2V agrees to update, increase and/or change the Services in order to resolve the Customer's support issues, then the Customer shall be responsible for, and shall pay to V2V, the costs incurred by V2V as a result of updating, increasing and/or changing the Services and any associated fees to be paid in respect of such upgrade or amendment.*

*7.8. V2V will give the Customer as much prior notice as practicable of any alteration to the Charges and in any event not less than 1 month's prior notice of such change.*

*7.9. If V2V becomes liable to pay any additional fees, costs or charges to the Government, a regulatory authority or self-regulatory authority and such fees, costs or charges are directly attributable to the provision of Services to the Customer under the Agreement, V2V shall be entitled to pass through such fees, costs and charges to the Customer with immediate effect.*

*7.10. Where V2V agrees to do work outside a Working Day at the request of the Customer, V2V may charge the Customer in accordance with V2V's applicable man-hour rate.*

## **8. SUSPENSION AND VARIATION OF THE SERVICES**

*8.1. V2V reserves the right (at its option) to terminate the Agreement or suspend or vary the Services:*

*8.1.1. if the Customer fails to comply with its obligations under the Agreement including the obligation to pay the Charges;*

*8.1.2. if V2V reasonably believe the Customer has provided false or misleading Customer Information;*

*8.1.3. V2V needs to modify, expand, improve, maintain or repair the Services;*

*8.1.4. the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from V2V; or*

*8.1.5. V2V considers that there is a significant credit risk;*

*8.1.6. V2V considers that there is a fraud risk;*

*8.1.7. V2V's contract with its Authorised Provider to the Services is suspended, varied or terminated.*

*8.2. The re-instatement of suspended Services shall be at V2V's sole discretion and the Customer shall nevertheless be responsible for payment of the Charges during*

any period where the Services are suspended pursuant to clause 8.1.1, clause 8.1.2 and clause 8.1.4.

#### *Planned Engineering Works*

8.3. V2V will provide a minimum of 3 Working Days' notice of all scheduled outages which may impact availability of the Services.

### **9. TERM AND TERMINATION**

9.1. The Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and any Renewed Term or Subsequent Term or as otherwise agreed in writing by V2V.

9.2. If upon the expiry of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Customer has not;

9.2.1. agreed a Renewed Term; or

9.2.2. given notice to V2V in accordance with Clause 9.5

V2V will continue to supply the Services to the Customer for the Subsequent Term unless the Customer terminates the Agreement as set out in Clause 9.5.

9.3. If a Renewed Term has been agreed V2V will continue to supply the Services to the Customer for the Renewed Term unless the Customer terminates the Agreement as set out in Clause 9.5.

9.4. The Customer may:

9.4.1. terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of four (4) weeks prior written notice to V2V such notice to expire on the expiry date of the Minimum Term, the Renewed Term or Subsequent Term (as the case may be); or

9.4.2. terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired but will have to pay the Early Termination Fee to V2V.

9.5. Without prejudice to any other rights or remedies to which V2V may be entitled, V2V may terminate the Agreement without liability to the Customer if:

9.5.1. the Customer commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within the following periods from the date of the notice from V2V:

9.5.1.1. 7 days where there is a failure to pay a sum due under the Agreement;

9.5.1.2. 14 days, if either sub-clauses 9.2.1.1 or 9.2.1.3 do not apply;

9.5.1.3. a shorter time, reasonably specified in the notice, in the case of Emergency;

*9.5.1.4. 48 hours where the Customer is repeatedly in breach of the Agreement (including without limitation repeatedly late in paying sums due under the Agreement) where notice of a previous breach for the same reason has been given;*

*9.5.2. the Customer commits a material breach of any of the terms of the Agreement that is not capable of being remedied; or*

*9.5.1. the Customer is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution, or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer.*

*9.6. V2V may, without prejudice to any of its other rights under the Agreement, terminate the Agreement with immediate effect by notice in writing in the event that:*

*9.6.1. V2V is not, for whatever reason, permitted or authorised to provide the Services;*

*9.6.2. V2V reasonably considers that the breach, act, omission or default of the Customer may result in V2V's failure to comply with any applicable legislation or may place V2V in breach of its agreement with its licensors;*

*9.6.3. use by the Customer of the Services is, or is likely to cause damage to, interrupt or otherwise prevent V2V from supplying the Services to other customers or complying with obligations owed to other customers;*

*9.6.4. such action is required to comply with a direction from Ofcom or any competent authority to suspend or cease the provision of the Service or any part of it;*

*9.6.5. such action is required in order to comply with any legislation;*

*9.6.6. V2V has reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity.*

*9.7. If the Agreement commences before V2V has completed its credit check of the Customer, V2V shall be permitted to terminate the Agreement immediately by written notice if the Customer fails to pass V2V's credit policy.*

*9.8. The rights to terminate the Agreement given by this Clause 9 shall be without prejudice to any other right or remedy of V2V in respect of the breach concerned (if any) or any other breach.*



## **10. EFFECTS OF TERMINATION**

10.1. Upon termination or expiry of the Agreement for any reason:

10.1.1. the Customer shall immediately pay to V2V all of V2V's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, V2V shall submit an invoice, which shall be payable by the Customer immediately on receipt;

10.1.2. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry;

10.1.3. clauses which expressly or by implication survive termination shall continue in full force and effect; and

10.1.4. unless otherwise agreed in writing by V2V:

10.1.4.1. all rights and licences of the Customer under the Agreement shall terminate; and

10.1.4.2. the Customer shall cease to use, and delete, all instances of the software.

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

11.1. Nothing in these Terms shall exclude or limit the liability of either party to the other:

11.1.1. for death or personal injury caused as a result of its negligence or the negligence of its employees, agents or subcontractors;

11.1.2. for fraud or fraudulent misrepresentation;

11.1.3. for breach of the terms implied by section 2 of the Supply of Goods & Services Act 1982.

11.2. Subject to clauses 11.1 the total liability of V2V to the Customer arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:

11.2.1. in respect of damage to, or destruction of, tangible property, £500,000; and

11.2.2. in respect of all other damage, loss or liability, £500,000.

11.3. Subject to Clause 11.1, V2V shall not be liable to the Customer for:

11.3.1. loss of profits; or

- 11.3.2. *loss of revenue;*
- 11.3.3. *loss of income or business;*
- 11.3.4. *loss of time;*
- 11.3.5. *depletion or loss of goodwill, reputation or similar losses;*
- 11.3.6. *loss of anticipated savings;*
- 11.3.7. *loss of anticipated profits;*
- 11.3.8. *loss of anticipated revenue;*
- 11.3.9. *loss of data;*
- 11.3.10. *loss of use;*
- 11.3.11. *loss of contract;*
- 11.3.12. *any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.*

11.4. *The Services are not intended to be used for, or in relation to, any purpose which will or may affect the safety or wellbeing of any person and V2V excludes any and all liability whatsoever arising out of, or related to, any such use.*

11.5. *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 Agreement.*

11.6. *The provisions of this Clause 11 shall survive termination or expiry of the Agreement.*

## **12. CONFIDENTIALITY AND DATA PROTECTION**

12.1. *During the term of the Agreement and for three (3) years after termination, the Customer shall keep all Confidential Information in strict confidence. The Customer may disclose Confidential Information to its employees that need to know it and to use it exclusively for the purposes contemplated by the Agreement. This Clause shall not apply to information that the Customer can prove:*

12.1.1. *is or becomes publicly known through no act or omission of the Customer; or*

12.1.2. *it already had in its possession prior to obtaining the information directly or indirectly from V2V; or*

12.1.3. *a third party lawfully disclosed to the Customer free of restrictions on disclosure and use.*

12.2. If V2V processes any Personal Data on the Customer's behalf when providing the Services, the parties record their intention that the Customer shall be the data controller (as defined in the GDPR) and V2V shall be a data processor (as defined in the GDPR) and in any such case the Customer and V2V shall comply with their respective obligations under the GDPR:

12.2.1. the Customer shall ensure that it is entitled to transfer the relevant Personal Data to V2V so that V2V may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf within the EC;

12.2.2. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing or disclosure of the Personal Data or its accidental loss, destruction or damage.

12.3. Notwithstanding clause 12.2, V2V may collect and process the following data about the Customer:

12.3.1. information which V2V collects or which the Customer submits to V2V during any sales or registration process;

12.3.2. information the Customer provides when filling in forms or by corresponding with V2V by phone, e-mail or otherwise. This includes information the Customer provides when it requests the Services. The information the Customer gives to V2V may include names, addresses, e-mail addresses and phone numbers of users of the Services and of the Customer and financial and credit card information.

12.4. The Customer agrees that V2V may contact BT or previous communications service providers of the Customer to obtain information required to perform the Services.

12.5. The Customer agrees that V2V may use information held about the Customer and users of the Services in the following ways:

12.5.1. to open and manage an account for the Services, to deliver products and services ordered by the Customer, for security and emergency service support, for credit checking and fraud prevention, and for product analysis;

12.5.2. to carry out V2V's obligations arising from any contracts entered into between the Customer and V2V and to provide the Customer with the information, products and services that it requests from V2V;

12.5.3. to notify the Customer about changes to the Services.

12.6. The Customer agrees that V2V may share information and data provided by the Customer including any Personal Data of users of the Services to:

12.6.1. V2V's Network Operator to enable it to process the Customer's information and users Personal Data, which V2V collects or which the Customer submits to V2V during any sales or registration process;

*12.6.2. any member of V2V's group, which means V2V's subsidiaries, ultimate holding company and its subsidiaries, as defined in section 1159 of the UK Companies Act 2006.*

*12.7. The Customer agrees that V2V may disclose information and data provided by the Customer including any users Personal Data to third parties:*

*12.7.1. in the event that V2V sells or buys any business or assets, in which case V2V may disclose such information and Personal Data to the prospective seller or buyer of such business or assets;*

*12.7.2. if V2V or substantially all of its assets are acquired by a third party, in which case information and Personal Data held by V2V about its customers will be one of the transferred assets; and*

*12.7.3. if V2V is under a duty to disclose or share the Customer's information and Personal Data in order to comply with any legal obligation, or in order to enforce or apply these Terms and other agreements; or to protect the rights, property, or safety of V2V, its customers, or others. This includes exchanging information with other companies and organisations for the purposes of fraud protection and credit risk reduction.*

*12.8. The Customer shall ensure that the relevant individuals and users of the Services have been informed of, and have given their consent to, such use, processing, and transfer of their Personal Data, as required by the GDPR and as set out in this Clause 12*

### **13. INTELLECTUAL PROPERTY RIGHTS**

*13.1. Unless otherwise agreed in writing, all Intellectual Property Rights in and to the Services belong, and shall continue to belong, to V2V and/or its licensors.*

*13.2. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by V2V.*

*13.3. The Customer acknowledges that it shall have no licence, right, title or interest in or to any IPR of V2V or its licensors except as set out in the Agreement. Without prejudice to the right of the Customer or any third party to challenge the validity of any Intellectual Property Rights of V2V or its Authorised Provider, the Customer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of V2V or its Authorised Provider and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.*

*13.4. This Clause shall survive termination or expiry of the Agreement.*

### **14. FORCE MAJEURE**

*14.1. For the purposes of the Agreement, Force Majeure Event means an event beyond the reasonable control of V2V including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of V2V or any other party),*

*failure of a utility service 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 or subcontractors.*

*14.2. V2V will not be liable to the Customer for any failure or delay in performing its obligations under the Agreement or supplying the Services:*

*14.2.1. as a result of a Force Majeure Event;*

*14.2.2. if another supplier delays or refuses the supply of an electronic communications service to V2V or any of V2V's suppliers and no alternative service is available at reasonable cost; or*

*14.2.3. if legal or regulatory restrictions are imposed upon V2V or any of V2V's suppliers that prevent V2V or any of V2V's suppliers from supplying the Service.*

*14.3. If the Force Majeure Event prevents V2V from providing any of the Services for more than 12 weeks, V2V shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Customer.*

## **15. NOTICES**

*15.1. Any notice or other communication given to a party under or in connection with the Agreement 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, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.*

*15.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working 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 Working Day after transmission.*

## **16. VARIATION**

*16.1. Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by V2V.*

*16.2. V2V may change the Agreement at any time by giving at least 14 days' notice before the change takes effect in order to:*

*16.2.1. comply with any legal or regulatory obligation (save where V2V's or its supplier's compliance with that legal or regulatory obligation requires a shorter period of notice);*

16.2.2. *change the Charges;*

16.2.3. *protect the use of V2V's Intellectual Property Rights;*

16.2.4. *introduce new or improved service levels;*

16.2.5. *introduce process changes, provided that they are not to the Customer's material detriment;*

16.2.6. *maintain the integrity or security of the Services; or*

16.2.7. *improve clarity, or make corrections to typographical errors.*

16.3. *In respect of changes to the Agreement made under Clauses 16.2 or 7.8, such changes will not require a new Agreement to be signed by the parties and will take effect at the expiration of the notice.*

16.4. *With respect to any matters not falling within Clause 16.2 and 7.8, V2V shall use its reasonable endeavours to give the Customer written notice of the proposed changes at least 21 days before the date the changes are proposed to take effect.*

## **17. GENERAL**

17.1. *Assignment and other dealings.*

17.1.1. *V2V may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any Authorised Party, third party or agent.*

17.1.2. *The Customer shall not, without the prior written consent of V2V, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.*

17.2. *Severance. Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.*

17.3. *Waiver. Any failure by either party to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent such party from exercising or enforcing such right at a later time.*

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

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

*17.6. Governing law. The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.*

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