

## VOICE 2 VOICE LTD

### TERMS AND CONDITIONS FOR DATA SERVICES

#### 1. DEFINITIONS AND INTERPRETATION

##### 1. DEFINITIONS AND INTERPRETATION

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

<b>Agreement</b>	the agreement between you and V2V for the supply of the Services in accordance with the Order and these Terms;
<b>BT</b>	British Telecommunications plc and its associated companies;
<b>Charges</b>	the charges as notified to the Customer from time to time and payable by the Customer to V2V for the Services;
<b>Commencement Date</b>	the date of the Agreement;
<b>Confidential Information</b>	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;
<b>Connection</b>	a single connection of the Customer to the Services;
<b>Customer, you</b>	the individual, company, entity, organisation or business that purchases the Services from V2V;
<b>Customer's Website</b>	any website provided and which the Customer uses in connection with the Website Services;
<b>Domain Name</b>	such domain name as V2V may allocate to the Customer such allocation being subject to separate terms and conditions details of which can be obtained upon written request or by contacting V2V;
<b>DPA</b>	the Data Protection Act 1998;
<b>Early Termination Fee</b>	means: (i) all Charges that are accrued up to and including the date of termination; plus (ii) an average per day value of the 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 Exchange Line 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);

<b>Equipment</b>	any communications or other equipment recommended and approved by the Supplier and/or third party operator as an essential part of providing the Services. This may include (without limitation) modem and router cables. It does not include leads, batteries or other accessories or equipment the Customer might purchase from any supplier the Supplier recommends or any alternative supplier;
<b>ESTN</b>	Ethernet Services Telephone Network;
<b>Excess Construction Charges</b>	any Charge that V2V may apply for resources (including Equipment) required to provide a Service, or any aspect of a Service to a Site that exceeds the level of resources normally required to provide the applicable Service to a Site;
<b>Exchange Line</b>	any apparatus forming part of the System used by V2V to connect the Site to a telephone exchange to provide the Services;
<b>IPR</b>	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;
<b>Minimum Term</b>	means twelve (12) months (or such other minimum period as is set out in the Order) from the date the Order is deemed completed by V2V and made available to the Client;
<b>Network</b>	the fixed line telecommunications network operated by a Network Operator;
<b>Network Operator</b>	a network operator who operates a Network to which a line is connected in accordance with an agreement between the Network Operator and V2V;
<b>OFCOM</b>	the Office of Communications or other replacement authority;
<b>Order</b>	the Customer's order for the Services;
<b>Our Website</b>	the website located at <a href="http://www.voice2voice.co.uk">www.voice2voice.co.uk</a> as may be amended from time to time;
<b>Overage Charge</b>	means the charges for use of data in excess of any agreed limit on the Services levied by V2V and as more particularly detailed in the Service Plan;
<b>Personal Data</b>	personal data, as defined in the DPA;
<b>Renewed Term</b>	the renewed term agreed with V2V in writing in accordance with Clause 3.3;

<b>Rental</b>	the monthly, quarterly or annual 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;
<b>Service Plan</b>	the monthly, quarterly or annual tariff which the Customer selects at the time the Customer orders the Services;
<b>Services</b>	the data services including but not limited to broadband, FTTC, MPF, SMPF, ESTN, Ethernet First Mile and Ethernet as set out in the Order and that V2V agrees to supply to the Customer;
<b>Site</b>	the site(s) at which V2V shall provide the Services;
<b>Subsequent Term</b>	a minimum of twelve (12) months (or such other period set out in the Order);
<b>V2V, We</b>	Voice 2Voice Limited (Company Number: 4785166) whose Registered Office is at Suite 9, Lakhpur Court, Staffordshire Technology Park, Stafford, Staffordshire, ST18 0FX;
<b>V2V's Equipment</b>	any equipment owned by V2V or its licensors that V2V uses to provide the Services;
<b>System</b>	the Network that V2V uses to provide the Services;
<b>Transmission Speed</b>	either the rate in Kbps or Mbps that data is transferred between the Equipment and the Service. The Transmission Speed available to the Customer will be affected by the operational and technical characteristics of the Customer's telephone line, the Network and the Customer's chosen Equipment;
<b>Working Day</b>	09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by V2V.

**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. No order placed by the Customer shall be accepted by V2V until the Order is accepted by V2V in writing or (if earlier) V2V provides the Services to the Customer.
- 2.3. Subject to Clause 7.8, once an Order has been accepted by V2V, the Customer may not cancel an Order.
- 2.4. V2V shall be under no obligation to provide the Services until acceptance of the relevant Order by V2V. V2V may accept or reject an Order at its sole discretion.

2.5. Subject to Clause 2.6, 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.

2.6. The Customer acknowledges and agrees that where the Order includes ESTN Services the V2V Terms and Conditions for Calls and Lines, available on Our Website, shall apply to and form part of the Agreement.

2.7. 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. MINIMUM TERM, SUBSEQUENT TERM, RENEWED TERM AND EARLY TERMINATION FEE**

3.1. The Agreement shall commence on the Commencement Date and will continue for the Minimum Term and any Renewed Term or Subsequent Term.

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 9.1.

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

3.3.1. agreed a Renewed Term; or

3.3.2. given notice to V2V in accordance with Clause 9.1  
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 9.1.

3.4. 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 9.1.

3.5. If the Customer terminates the Agreement before the expiry of the Minimum Term, Renewed Term or Subsequent Term, the Customer shall pay the Early Termination Fee.

### **4. THE SERVICES**

4.1. In order for V2V to enable the Customer to use the Services the Customer agrees to comply with the following:

4.1.1. the Customer must have an existing BT or any other non-cable network telephone line;

4.1.2. the Customer must have a personal computer of minimum specification;

4.1.3. the Customer must have compatible cables and extension leads between any communications equipment and telephone socket; and

4.1.4. V2V's provision of the Services is subject to testing to V2V's satisfaction of the Customer's telephone line to ensure that broadband is available in the Customer's area and can be activated. If any installation work is needed at the Customer's Site before V2V is able to provide the Services, the Customer must arrange this through an authorised third party or by V2V at the Customer's own cost.

4.2. In certain limited circumstances, in addition to any express restrictions set out in any relevant handbook for the Services, the Customer accepts that:

4.2.1. V2V may not be able to set up the Services for technical reasons beyond V2V's control;

4.2.2. some limitations within the Network may not become apparent through no fault of V2V until after the Service has been installed and working for some time; and

4.2.3. there may be geographical limitations that may affect or prevent installation of a Service. The Customer accepts that provision of the Services is subject to these potential limitations. In such circumstances, V2V will notify the Customer as soon as possible and the Service may have to be

withdrawn. Where the Services are withdrawn, V2V will provide the Customer with a refund of any advance Charges that the Customer has already paid to V2V for such withdrawn Services.

4.3. Use of the internet is subject to the Customer's own risk and subject to any applicable laws.

4.4. Upon activation of the Services the Customer accepts that the Customer may experience a temporary loss of the Customer's existing line.

4.5. In the event that the Customer wishes to port an existing URL which the Customer wishes to use in connection with the Services, the Customer agrees and understands there may be downtime associated with this process and V2V is not responsible for any costs or consequence of delay arising in connection with any such downtime, provided always that V2V reserves the right to reject such porting request at its sole discretion.

4.6. V2V may reject or remove names that V2V believes may infringe someone else's trade mark or other intellectual property rights or which V2V considers is offensive, abusive, defamatory or obscene.

4.7. The Customer may be allocated a username and password in order to access the Services. The Customer shall keep such username and password confidential and shall take all necessary steps to ensure their confidentiality and that they are not disclosed to any unauthorised third parties. The Customer will:

4.7.1. inform V2V if the Customer becomes aware of or suspects any unauthorised use of the Customer's username and password and agrees to take all necessary steps (or such steps as may be requested by V2V) to prevent such use; and

4.7.2. indemnify V2V for any loss, costs, expenses or damages that V2V may suffer as a result of a breach of this Clause 4.7.

4.8. To ensure that the Services remain secure, the Customer must not change or attempt to change a username without V2V's written permission.

4.9. If the Customer moves and wishes to access the Services at their new site then:

4.9.1. the Customer will be required to set up a new account for such new site by contacting V2V in writing;

4.9.2. the Customer shall provide V2V with proof of its new address. If the Customer does not, its existing account will not be terminated and the Customer will be liable for any Charges that remain due on that account;

4.9.3. the Customer will pay the administration fee for setting up a new account when the Customer moves;

4.9.4. if any V2V Equipment is lost or damaged when the Customer moves address the Customer will indemnify V2V in respect of, all costs, expenses and liabilities that V2V incurs as a result of any loss of or damage to the Equipment, unless directly caused by V2V.

4.10. When the Customer has moved address and notified V2V in accordance with Clause 4.9, a telephone line test will need to be carried out. If it is not possible to connect the Customer, the Customer may terminate the Agreement provided:

4.10.1. it is no earlier than the date the Customer actually moves;

4.10.2. the Customer gives V2V ten (10) days' notice in writing; and

4.10.3. the Customer sends to V2V proof of the Customer's change of address.  
Any Charges due in respect of the Customer's existing account to the date of cancellation will remain payable.

4.11. Where V2V connect the Customer at the Customer's new address, V2V will use reasonable endeavours to ensure that the Customer's connection is at the same Transmission Speed as that at the Customer's old address prior to the Customer's move. However, if it is not possible, V2V will connect the Customer at the Transmission Speed V2V determines is available and possible.

4.12. As part of the Services the Customer may set up the Customer's Website(s). Domain Names are subject to availability and V2V cannot guarantee the availability of any specific domain name. The Customer shall

ensure that the Customer saves the Customer's e-mails in the event that the Customer's e-mail storage is approaching its limit. Only one free Domain Name may be allocated to the Customer during the term of the Agreement at no additional cost; any additional Domain Names will be charged at V2V's then current rate.

4.13. Where V2V provides the Customer with one or more e-mail addresses and storage as part of providing the Services the Customer acknowledge that such e-mail addresses are not the Customer's property and that V2V is entitled to alter them in its sole discretion. V2V will only change the Customer's e-mail addresses where reasonably necessary after providing the Customer with reasonable notice of such change.

4.14. The number of e-mail addresses and the amount of e-mail storage that V2V provides to the Customer will depend on the Service Plan the Customer subscribes to.

4.15. The Customer acknowledges that the Customer has no right to sell (or to agree to transfer) or dispose of in any way, any e-mail addresses or Domain Name provided to the Customer by V2V.

4.16. If V2V receives a complaint about the Customer's Website V2V may suspend it immediately without notifying the Customer beforehand. V2V may ask the Customer to either agree with the person making the complaint that the material can remain or can be altered or ask the Customer to agree to remove it permanently. However, if V2V believes that the material on the Customer's Website is sufficiently harmful, unlawful or offensive, is illegal or V2V receives further complaints about the Customer's Website after V2V has already issued the Customer with a warning, V2V may end the Agreement without further notice to the Customer. In such circumstances V2V will be under no obligation to provide the Customer with any refund.

4.17. If V2V supplies or provides any third party software to the Customer pursuant to the Agreement, then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision, provided such terms and such conditions are not inconsistent with the Customer's rights under this Agreement. The Customer undertakes to:

4.17.1. use such software strictly in accordance with such terms and conditions, which have been provided to it by V2V;

4.17.2. enter into any licence or agreement reasonably required by the owner of any intellectual property rights in any software supplied to the Customer for the purpose of accessing the Services.

4.18. The Customer acknowledges that as part of the Customer's Order to receive and enjoy the full benefit of the Services some minor modifications may need to be made to the Customer's computer. It is the Customer's responsibility to ensure that such modifications do not invalidate the terms of any warranty that the Customer may have concerning the Customer's computer. V2V will not be liable for any claim that the Customer's warranty has been invalidated (if applicable) as a result of work carried out by the Customer, V2V, or V2V's agents in order to make the Customer's computer operate with the Services.

4.19. It is the Customer's responsibility to ensure the compatibility of the Services with the Customer's personal computer; any hardware, software or any other equipment or services.

4.20. The Customer recognises that the Services may from time to time be adversely affected by failure of a server or other external causes and may fail or require maintenance without notice. The Customer further acknowledges that V2V will have no liability for failure of the Services unless and to the extent caused by V2V's negligence or fraudulent misrepresentation.

## **ROUTER**

4.21. The Customer acknowledges that V2V is not responsible for any broadband router that has not been provided by V2V or the configuration of that device and that any fault diagnosis on the broadband circuit will only be carried out with the test router supplied by V2V for that purpose. The Customer also acknowledges that it is the Customer's responsibility to provide full assistance during that testing and that failure to provide such assistance that results in an inability for V2V to correctly troubleshoot the fault will be the sole responsibility of the Customer and V2V will not be liable for any claim resulting due to loss of, or a poor speed Services.

## **5. V2V'S GENERAL OBLIGATIONS**

5.1. V2V shall supply the Services to the Customer from the Commencement Date for the term of the Agreement in accordance with these Terms.

5.2. 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.

5.3. The provision of the Services is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place. The Customer shall obtain any consent or facility that is necessary or desirable for V2V to provide the Services at the Site.

5.4. V2V may:

5.4.1. 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

5.4.2. determine how the Services are presented and delivered or are otherwise made available to the Customer. V2V can change the way they are presented, delivered or otherwise made available to the Customer at any time.

5.5. Pursuant to Clause 5.4 where a change to, or withdrawal of, a Service option arises:

5.5.1. solely due to V2V's business requirements V2V will give at least three months' written notice to the Customer; or

5.5.2. as a result of changing arrangements with a third party or for legal or regulatory reasons, V2V will give as much notice to the Customer as is reasonably practicable in the circumstances.

5.6. Upon expiry of any such notice period set out in Clause 5.5:

5.6.1. V2V will not accept any new Orders for the relevant service option; and

5.6.2. At V2V's discretion:

5.6.2.1. any Orders that have been accepted by V2V but where a Connection is not available for use will either be:

5.6.2.1.1. ceased by V2V; or

5.6.2.1.2. allowed to progress through to completion; or

5.6.2.2. the Customer will be offered a new service option for acceptance, save that if, in the reasonable opinion of the Customer, it deems the service levels of the new service to be materially less than the service to be withdrawn, and the Customer may terminate the Order without incurring any form of Early Termination Charges.

5.7. V2V may relocate a Connection within the Network for reasons including security, improvements to infrastructure, capacity management, cost reduction or mitigation of a known fault, provided any such relocation will not have an adverse effect on the Services. If the Customer concludes (in consultation with V2V) that the relocation will have an adverse effect on the relevant Services it may terminate the Connection without incurring Early Termination Charges.

5.8. The Services will be provided within V2V's Network Operator's Network area but it's always possible that the quality or coverage may be affected at times.

5.9. The Customer acknowledges that:

5.9.1. the provision of certain Services shall be subject to the completion of a satisfactory Site survey. In a limited number of cases, V2V or its representative shall require access to the Site to complete the Site survey;

5.9.2. upon completion of the Site survey, V2V shall notify the Customer of the estimated Connection date for the relevant Service; and

5.9.3. V2V shall inform the Customer by email when the Service has successfully been installed.

5.10. V2V shall exercise the reasonable care and skill of a competent telecommunications operator. The Customer acknowledges that:

5.10.1. V2V cannot guarantee that the Services will be available without interruption or will be free from error;

5.10.2. it is technically impossible to provide an incident free service and V2V does not undertake to do so;

5.10.3. the Services have not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements;

5.10.4. the operability, quality and availability of the Services may sometimes be affected by factors outside V2V's, BT's or the Network Operator's control such as physical obstructions, atmospheric conditions and other causes of radio interference, faults in other telecommunication networks or other events;

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

5.10.6. V2V, BT or other Network Operator 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.

5.11. V2V shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them or for any delay caused by circumstances beyond V2V's reasonable control including but not limited to delays in obtaining consent to carry out work at the Site or delay in the Customer approving any Excess Construction Charges. Time shall not be of the essence of the Agreement.

5.12. V2V shall not and shall not be under any obligation (express or implied) to monitor the Customer's usage and/or patterns of usage.

5.13. The Customer shall report any fault in the Services to V2V's Customer Services Department as soon as reasonably practicable, where it will be dealt with in accordance with the agreed fault repair service or any applicable service level agreement. V2V shall not be obliged to fix any fault if:

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

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

If V2V agrees to fix a fault:

5.13.3. caused by the circumstances set out in this Clause 5.13; or

5.13.4. caused by the Customer; or

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

5.13.6. where no fault is subsequently found

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

5.14. V2V shall not be liable for any fault whether under Clause 5.13 or otherwise unless the Customer gives written notice of the defect to V2V within seven (7) days of the time when the Customer discovers or ought to have discovered the defect.

## **Service Levels**

5.15. In fulfilling its obligations under these Terms V2V will comply with its obligations as set out in any applicable service level agreement for the Services.



5.16. The technical specification of each Service and manner in which V2V discharges its obligations under these Terms is at the sole discretion of V2V.

5.17. If the Customer instructs V2V to dispatch a V2V representative to any site to investigate a possible fault, V2V reserves the right to invoice the Customer for the visit should the fault be found to be with the Customer's network.

5.18. Where at the Customer's request V2V spends time investigating any fault which is repeatedly or continuously reported by the Customer and V2V concludes each time that there has been no service failure, V2V reserves the right to charge the Customer for all reasonable costs and expenses incurred in investigating the alleged Service Failure and the Customer agrees to pay such charges in accordance with Clause 7.

5.19. The Customer shall be responsible for claiming any service credit in accordance with the applicable service level agreement. Where a valid claim is made and the Customer becomes entitled to a service credit, V2V will issue a credit note to the Customer for an amount equal to the applicable service credit.

5.20. In order to receive an available service credit, the Customer must give notice to V2V, within 15 days of the end of the calendar month for which the service credit is claimed. If the Customer fails to claim the service credit to which it is entitled, the Customer shall be deemed to have waived its right to claim the service credit.

5.21. Service credits will not be available to the Customer to the extent that V2V fails to meet any service levels as a result of:

5.21.1. an act, fault or omission by the Customer, or any of its representatives, employees, agents or sub-contractors;

5.21.2. any equipment not supplied by V2V or a Network Operator;

5.21.3. any circumstances beyond V2V's control;

5.21.4. any failure by the Customer to act on V2V's reasonable instructions;

5.21.5. any suspension of the Services under Clause 8; or

5.21.6. any other event specified in the applicable service level agreement.

5.22. The duration of any Service fault, for the purposes of calculating service credits, will be measured from the time the fault report is logged by the V2V Customer Services Department to the time V2V can demonstrate that the Service has been restored to the standards set out in the applicable service level agreement.

5.23. Where the Customer suffers a fault or interruption in respect of any Service, V2V acknowledges that, in relation to such Service, the Customer is entitled to arrange for traffic to be redirected to another operator and the Customer agrees that, subject to compliance with any obligations in each applicable service level agreement, it is not V2V's responsibility to arrange for the provision of alternative services in such circumstances.

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

6.1. The Customer may only use the Services:

6.1.1. as laid out in the Agreement; and

6.1.2. for their own use. The Customer may not resell or commercially exploit any of the Services without the prior written consent of the Company.

6.2. The Customer shall comply with all security standards applicable to the Services and as notified to the Customer by V2V from time to time.

6.3. The Customer shall not utilise and shall ensure that no other person uses the Services:

6.3.1. for storing, reproducing, transmitting, communicating or receiving any material in breach of any law, regulation, code of practice or in breach of V2V's acceptable use policy; or

6.3.2. fraudulently or for any criminal or illegal purpose or in a manner that is contrary to any regulatory or legal requirement; or

6.3.3. to make defamatory, offensive, obscene, indecent, menacing, abusive, nuisance or hoax calls; or

6.3.4. to cause annoyance, inconvenience or needless anxiety to any person; or

6.3.5. contrary to instructions that V2V may give to the Customer from time to time; or

6.3.6. to copy, store, modify, publish or distribute services or content (including ringtones), except where V2V gives the Customer prior permission in writing; or

6.3.7. to download, send or upload content of an excessive size, quantity or frequency. V2V will contact the Customer if the Customers use is excessive; or

6.3.8. in violation of any applicable local, national, or international law or regulation;

6.3.9. in a manner which infringes the rights of any person, including intellectual property rights and rights of confidentiality.

6.4. To prevent spam from entering and affecting the operation of V2V's systems and the Services, V2V may take any reasonable measures or actions necessary to block access to or delivery of any e-mail which appears to be of an unsolicited nature and/or part of a bulk e-mail transmission. V2V may also use within its systems virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. However, V2V does not warrant that such technology will be effective against all virus attacks or unsolicited e-mails.

6.5. The Customer acknowledges that the Services are provided to other users and V2V owes a duty to them as a whole to preserve Network integrity and to avoid Network degradation. If, in V2V's reasonable opinion, V2V believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation V2V may change the Customer's Transmission Speed or manage the Customer's use of our Services as V2V see fit in the circumstances. This includes, but is not limited to, any circumstances where the Customer is running an application or program that places excessive bandwidth demands on the Services for continued periods. V2V may also impose a limit on the Customer's usage capacity at any time at our sole discretion if the Customer's usage is affecting or may affect other users' enjoyment of the Services.

6.6. During the term of the Agreement the Customer may request a change to the Customer's Service Plan at any time provided that it is only once in every thirty (30) days. Changes to the Customer's Service Plan are subject to availability and payment of any applicable Charges. V2V will use reasonable endeavours to complete the change as soon as possible but cannot guarantee how quickly this will be done and time shall not be of the essence. The Customer will be responsible for all Charges on the existing Service Plan until the change is completed.

6.7. V2V may publish an acceptable use policy which provides more detail about the rules for use of certain Services in order to ensure that use of the Services is not excessive, or to combat fraud and where Services V2V may introduce require certain rules to ensure they can be enjoyed by the Customer. If V2V publishes a policy, V2V will let the Customer know – such a policy may be amended from time to time.

6.8. The Customer must only use Equipment authorised by V2V for connection to the Network and also comply with all relevant legislation relating to their use.

6.9. The Customer will not use the Services to access any computer, network, or data without authorisation or in a manner which exceeds authorisation including, any attempt to:

6.9.1. retrieve, alter, or destroy data;

6.9.2. probe, scan or test the vulnerability of a system or network; or

6.9.3. breach, or defeat system or network security, authentication, authorisation, confidentiality, intrusion detection, monitoring, or other security measures.

6.10. The Customer shall co-operate with and comply with at all times:

6.10.1. any operating procedures and any other technical requirements of V2V as may be notified to the Customer from time to time;

6.10.2. V2V's reasonable instructions to ensure the proper use and security of the Services.

6.11. The Customer will provide V2V with all up to date and accurate information that V2V needs to provide the Services and allow V2V to use that information for credit checking and debt collection (including disclosure to and Data use by third parties acting for V2V) and any other uses and disclosures permitted under the DPA and will allow V2V to disclose such information to the extent that V2V is required to do so by PhonepayPlus, OFCOM, the law or any relevant authority.

6.12. The Customer shall:

- 6.12.1. keep all of V2V's Equipment at the Site safe and shall pay for the replacement and/or repair of any of V2V's Equipment which is lost, damaged (otherwise than by fair wear and tear) or destroyed by an act or omission of the Customer, its employees, agents or subcontractors;
- 6.12.2. not alter or move any of V2V's Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so;
- 6.12.3. not modify, move, relocate or in any way interfere with such V2V Equipment;
- 6.12.4. comply at all times with the specified operating procedures and interconnection requirements of V2V as may be notified to it from time to time;
- 6.12.5. indemnify V2V in respect of, all costs, expenses and liabilities that V2V incurs as a result of any loss of or damage to the Equipment, unless directly caused by V2V;
- 6.12.6. not cause the V2V's Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of V2V;
- 6.12.7. insure and keep insured all V2V's Equipment;
- 6.12.8. use the V2V Equipment only for the purpose of receiving the Services and in accordance with such reasonable instructions as may be given by V2V from time to time; and
- 6.12.9. permit V2V to inspect or test the V2V Equipment at all reasonable times.

6.13. It is the Customer's responsibility to make sure that V2V's Equipment is only used to access Services as permitted.

6.14. The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice V2V's Equipment in any way. The Customer will allow V2V to inspect, test, modify, change, add to, replace or remove any V2V's Equipment, either remotely or via a designated maintainer. At the end of the term of the Agreement, the Customer will allow V2V access at all reasonable times to collect any of V2V's Equipment in the Customer's possession.

6.15. The Customer shall at its own cost arrange for the required Site specific conditions, as notified by V2V. This will include, without limitation, mains electricity supply, connection points and computer terminals. The Customer shall prepare the Sites in accordance with V2V's reasonable instructions and reinstate them at the Customer's expense after V2V has completed any work necessary for V2V to be able to provide the Services.

6.16. The Customer shall ensure that any Equipment (excluding V2V's Equipment) that it uses in connection with the Services meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow V2V to do so at the Customer's expense.

6.17. The Customer shall indemnify V2V against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by V2V arising out of or in connection with:

- 6.17.1. the use or misuse of the Services by the Customer;
- 6.17.2. claims of third parties seeking damages for any loss or misuse of data by the Customer;
- 6.17.3. any breach by the Customer of the use provisions set out in this Agreement.

## **7. CHARGES AND PAYMENT**

7.1. The Customer shall pay the Charges.

7.2. V2V will send to the Customer within thirty (30) days of the Start Date, an invoice which will include a pro-rated charge for the remainder of the Minimum Term in which the Customer's account is activated and the charge for the any Renewed Term or Subsequent Term and, if applicable any costs for Equipment the Customer has purchased. Thereafter V2V will prepare and send to the Customer each month, quarter or year (as the case may be) an invoice detailing the charge for the following month, quarter or year.

7.3. The Rental shall continue to be payable during any period of suspension or restriction requested by the Customer in addition to any Charges for such suspension or restriction.

7.4. Where any Customer exceeds their allocated monthly limit then Overage Charges will apply to each applicable Connection.

7.5. The Customer shall pay the full amount invoiced by V2V by direct debit within fourteen (14) days of the date of invoice. If the Customer's credit rating decreases at any time, V2V shall be entitled to revise the credit terms to require payment upon invoice or in less than fourteen (14) days.

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

7.7. 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.

7.8. If any Excess Construction Charges are identified such Charges must be accepted by the Customer before work on the Order can continue. Where such Excess Construction Charges are identified, if no acceptance of such Excess Construction Charges is provided by the Customer within 30 days of notification by V2V of such Excess Construction Charges (or such longer period as the Parties may expressly agree), the Charges will be considered rejected and the Order deemed cancelled.

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

7.10. 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 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.

7.11. 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. This notice may be included in an invoice to the Customer. If V2V increases the Charges by more than the Retail Price Index during the Minimum Term, the Customer may terminate the Agreement on written notice to V2V within ten (10) days of receipt of the notice of increase, without the obligation to pay the Early Termination Fee.

7.12. V2V may also change the level of its Charges during or after the Minimum Term as a consequence of:

7.12.1. any OFCOM direction, determination, order or similar decision; or

7.12.2. any notice issued by BT or other Network Operator correcting an error in the amount or application of a charge or payment under its interconnect agreement with V2V.

In both cases, V2V shall only be entitled to change the level of its Charges where the foregoing impacts upon the basis upon which the Charges were calculated.

7.13. If the Customer disputes any invoice (including the calculation of any amounts payable) they must notify V2V within 3 months of the date of the invoice. The Customer shall not be entitled to any credit or refund relating to disputes raised after expiry of this period.

7.14. The Customer shall pay any charges raised to cover time spent dealing with matters (such as repairing faults) where this work is not covered under any of the terms of the Agreement. Such Charges could involve the provision or rearrangement of equipment, wiring, network or services.

7.15. 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.

7.16. 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 without notice:

8.1.1. if V2V is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, OFCOM, Radio Communications Agency, PhonepayPlus, an emergency services organisation or a competent administrative authority;

8.1.2. if V2V reasonably believe the Customer has provided false or misleading details about the Customer;

8.1.3. if V2V needs to modify, expand, improve, maintain or repair the Services or vary Network capacity;

8.1.4. if V2V needs to vary the technical specification of the Services in order to comply with any relevant law or regulation or direction from a competent authority;

8.1.5. if V2V advises the Customer that the Customers excessive use of Services is causing problems for other users, and the Customer is continuing to use the Services excessively;

8.1.6. if V2V receives a serious complaint against the Customer which V2V believes to be genuine;

8.1.7. if V2V reasonably believes that the Customer has used the Services for illegal or improper purposes in contravention of V2V's acceptable use policy or requirements;

8.1.8. if V2V reasonably suspects or believes that the Customer is in breach of Clause 6;

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

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

8.2. V2V shall have the right, without notice, to suspend or deny access to the Network:

8.2.1. by any equipment which will or may adversely affect the operation of the Network or provision of the Services whether or not such equipment has been approved or tested by V2V; or

8.2.2. if V2V suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out, via that equipment,

8.2.3. whenever it in its absolute discretion it considers necessary or desirable in order to monitor or reduce the incidence of fraud.

8.3. V2V will use its reasonable endeavours to notify the Customer promptly of the details of any incident where V2V has relied on its rights under Clause 8.2.3. The Customer will be responsible for all Charges incurred in respect of the Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the Services (other than by V2V or its representatives). V2V is not obliged to detect unauthorised or fraudulent use of the Services.

8.4. The Customer shall reimburse V2V for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Services where suspension or variation is implemented as a result of any act or omission of the Customer.

## **9. TERMINATION**

9.1. The Customer may:

9.1.1. terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of three (3) months 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

9.1.2. 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.

9.2. Either Party may immediately terminate the Agreement by written notice if the other Party:

9.2.1. 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 14 days of receipt of notice in writing to do so;

9.2.2. commits a material breach that is not capable of being remedied; or

9.2.3. commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part of the other Party's assets or the other Party suffers seizure of any of its property for non-payment of monies owing.

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

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

9.3.2. 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 the Network Operator;

9.3.3. use by the Customer of the Network or 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;

9.3.4. the Customer fails to pay the Charges when due;

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

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

9.4. If the Agreement is signed 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.

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

## **10. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

10.1. This Clause 10 sets out V2V's entire liability (including any liability for acts or omissions of V2V's employees, agents or subcontractors) in respect of any breach of the Agreement and any representation, statement or tortious act or omission arising out of or in connection with the Agreement.

10.2. Except as set out in these Terms, V2V provides no warranties, conditions or guarantees as to the description or quality of the Services, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

10.3. Subject to Clause 10.5, V2V's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall not exceed £1,000,000 (one million pounds sterling).

10.4. Subject to Clause 10.5, V2V shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Agreement, for:

10.4.1. loss of profits; or

10.4.2. loss of revenue;

10.4.3. loss of income or business;

10.4.4. depletion or loss of goodwill, reputation or similar losses;

10.4.5. loss of anticipated savings;

10.4.6. loss of use;

10.4.7. loss of contract;

10.4.8. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.

10.5. Nothing in these Terms shall exclude or limit the liability of V2V for:

10.5.1. death or personal injury resulting from the Company's negligence; or

10.5.2. for fraud or fraudulent misrepresentation; or

10.5.3. for any matter which it would be illegal for V2V to exclude or attempt to exclude its liability.

10.6. The provisions of this Clause 10 shall survive termination or expiry of the Agreement.

## **11. CONFIDENTIALITY AND DATA PROTECTION**

11.1. The Customer agrees to keep all Confidential Information confidential, to disclose it only 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:

11.1.1. is in the public domain otherwise than by the Customer's breach;

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

11.1.3. a third party subsequently disclosed to the Customer free of restrictions on disclosure and use. This Clause shall survive for three (3) years from when the Customer acquired that Confidential Information from V2V.

11.2. V2V and the Customer shall each comply with their respective obligations under the DPA and maintain all relevant registrations and notifications.

11.3. V2V may collect and process the following data about the Customer:

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

11.3.2. 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.

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

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

11.5.1. 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;

11.5.2. 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;

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

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

11.6.1. 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;

11.6.2. 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

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

11.7.1. 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;

11.7.2. 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

11.7.3. 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.

11.8. 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 DPA and as set out in this Clause 11.

## **12. IPR AND OWNERSHIP**

12.1. All IPR relating to the subject matter of the Agreement shall vest in V2V or its licensors, as appropriate and ownership of V2V's Equipment and the System (including any works performed by V2V to connect the Site to the System) shall remain with V2V or its licensors, as appropriate. The Customer:

12.1.1. acknowledges that it shall have no licence, right, title or interest in or to any IPR of V2V or its licensors or V2V's Equipment or the System;

12.1.2. may not include V2V's name or any other trade mark, brand name, logo or get-up associated with V2V without V2V's prior written consent.

12.2. Risk in any rental equipment shall pass to the Customer on delivery. Ownership of rental equipment remains at all times with V2V or other third party owner. The Customer has no right, title or interest in the rental equipment except that it is provided to the Customer for the duration of and on the terms of the Agreement.

12.3. This Clause shall survive termination or expiry of the Agreement.

## **13. CIRCUMSTANCES BEYOND REASONABLE CONTROL**

13.1. Neither Party shall be liable for any delay in performing its obligations under the Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations, national or local emergency, acts or omissions of government or other competent authority or regulatory authority, fire, flood, lightning or other weather of exceptional severity, subsidence, explosion or industrial disputes. This Clause does not apply to the Customer's obligation to pay the Charges.



13.2. If either Party is affected by circumstances beyond its reasonable control, it shall notify the other Party and shall use reasonable endeavours to overcome the effects. If those effects continue for more than three (3) months, the Parties shall enter into a discussion to agree, in good faith, the best way forward.

## 14. NOTICES

14.1. Notices must be in writing. The address for service on V2V (subject to any change notified by V2V) is: Voice 2 Voice Ltd, Suite 9, Lakhpur Court, Staffordshire Technology Park, Stafford, Staffordshire, ST18 0FX. The address for service on the Customer is as set out in the most recent invoice.

14.2. Notices may be delivered by hand, sent by first-class mail, fax or e-mail. Correctly addressed notices if delivered by hand, shall be deemed to have been delivered at the time of delivery, if sent by first-class mail shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been received instantaneously on transmission and in proving the service of any notice by e-mail, it will be sufficient to prove that such e-mail was sent to the specified e-mail address of the addressee.

## 15. ENTIRE AGREEMENT

15.1. It is acknowledged and agreed that the Agreement (including the documents and instruments referred to herein) (the **Documents**) shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;

15.2. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);

15.3. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

## 16. GENERAL

### 16.1. Assignment and other dealings.

16.1.1. 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.

16.1.2. 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.

16.2. **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.

16.3. **Waiver.** Any failure by V2V to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent V2V from exercising or enforcing such right at a later time.

16.4. **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.

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

### 16.6. Variation.

16.6.1. V2V shall be entitled to reasonably amend the Agreement at any time upon notice to the Customer if there is any amendment to the agreement between V2V and the network provider which directly or indirectly impacts upon the Agreement.

16.6.2. 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.

16.7. **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 English law.

16.8. **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).

**SERVICE LEVELS**

<b>SERVICE</b>	<b>SERVICE LEVEL</b>	<b>DO OVER-USAGE CHARGES APPLY?</b>
Ethernet	Support 24/7 4 hour fix time	No
EFM	Support Mon – Fri 9am to 5pm 7 hour fix time	No
Ethernet over Fibre to the cabinet (EoFTTC)	Support Mon – Fri 9am to 5pm	No
Fibre to the cabinet (FTTC)	No Service Level available	Yes
Broadband (ADSL, MPF SMPF)	No Service Level available	Yes