

1. INTERPRETATION

1.1 Definitions. In the Contract, the following definitions apply:

Act: the Telecommunications Act 1984 and any subsequent or related legislation.

Airtime Charge: means the monthly rental charge due per Connection.

Blackberry Equipment: mobile communications devices manufactured by Blackberry Limited.

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

Charges: the charges payable in respect of the Services which shall include the Airtime Charge and the Management Charge.

Connection: enabling the Customer to make calls to fixed-line, mobile, non-geographic and international telephone numbers or any other Service provided by the Supplier by means of the Network where there is no Network Provider Agreement between the Network Provider and the Customer.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these General Terms and any applicable Product Specific Terms and the Order.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Delivery Location: has the meaning set out in clause 4.2.

Dispute Resolution Procedure: the procedure described in clause 18.

Force Majeure Event: has the meaning given to it in clause 16.1.

General Terms: these terms and conditions as amended from time to time in accordance with clause 19.7.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, that is agreed in writing by the Customer and the Supplier.

GSM Gateway: means any equipment containing a SIM Card which enables the routing of calls from fixed apparatus to mobile equipment by establishing a mobile to mobile call.

Group: in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that

company. Each company in a Group is a member of the Group

Incentives: means any redemptions or similar promotional deals which provide to the Customer a financial incentive or rebate or the provision of Goods free of charge or at a discounted rate from the ordinary retail price when placing an Order and which shall be as set out in the Order.

Industry Price Change: means a variation in charges that occurs during the Minimum Period that is required due to regulator action, or that relates to variations in wholesale pricing adopted collectively by the majority of the UK's mobile network operators.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to 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.

Management Charge: the monthly fee payable by the Customer to the Supplier in respect of the account management services provided by the Supplier following the expiry of the minimum period of the Network Provider Agreement.

Migration: means a transfer of a telephone number to the Supplier from the same Network to which the number is to be connected under the Contract.

Minimum Average Monthly Call Spend Per Connection: means the Customer's monthly minimum expenditure in respect of each Connection (excluding the Airtime Charge and VAT), as specified in the Order either individually or in aggregate for the Total Connections (in which case the Minimum Average Monthly Call Spend Per Connection shall be such aggregate sum divided by the Total Connections).

Minimum Period: the minimum period of duration of the Contract for each Order as set out in the Order, the start date for such minimum

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period shall be advised by the Supplier to the Customer.

Mobile Phone Equipment: any of the Goods which are cellular or landline telephone and to be provided by the Supplier pursuant to the Contract.

Network Provider: the telecommunications company which provides, amongst other things, the mobile network and telecommunications infrastructure for the Goods.

Network Provider Agreement: if any, the agreement between the Network Provider and the Customer in respect of the provision of an element of the Services by the Network Provider to the Customer.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Supplier's quotation, any applicable pricing schedule, any Specific Terms, the Service Specification, any statement of work and any addenda thereto, or in the case of Goods only has been requested in writing by the Customer, and in all cases which has been accepted by the Supplier in accordance with clause 2.3.

Order Commencement Date: has the meaning set out in clause 2.3.

PAC: means Port authorisation code.

Port: means a transfer of a telephone number to the Supplier from a network which is different from the Network to which the number is to be connected under the Contract.

Product Specific Terms: the Product Specific Terms document that describes the additional licensing terms for specific Products and Services.

RIM Data Relay: the secure network infrastructure provided and supported by Blackberry Limited to provide secure connectivity between the Blackberry Equipment and customer content including, but not limited to, email, content and remote device management services.

Services: the services, to be supplied either by the Supplier or the Network Provider to the Customer as set out in an Order Form and any Service Specification.

Service Specification: the description or specification for the Services as provided in writing by the Supplier to the Customer.

Specific Terms: any terms and conditions set out in the Order which are expressly stated to amend the General Terms in respect of that Order.

SIM Card: a 'Subscriber Identity Module carrying a unique IMSI number used to identify and authenticate subscribers on mobile telephony devices.

Supplier: Vivio Limited registered in England and Wales with company number 04237192.

Supplier Materials: has the meaning set out in clause 8.1(g).

Total Connections: the aggregate number of Connections to be provided pursuant to the Order or where expressly stated in the Specific Terms, one or more Orders.

Vivio Connect: means the provision and maintenance of a Connection enabling the Customer to make calls to fixed-line, mobile, non-geographic and international telephone numbers or any other Service provided by the Supplier by means of the Network where there is no Network Provider Agreement between the Network Provider and the Customer.

1.2 **Construction.** In the Contract, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

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2. BASIS OF CONTRACT

- 2.1 The relationship between the Customer and the Supplier in respect of the provision of the Services by the Supplier to the Customer shall be governed by the General Terms (as amended by the Specific Terms (if any)) and the Product Specific Terms. If and to the extent that any Services and/or Goods are required the Customer shall place an Order with the Supplier and if the Order is accepted in accordance with clause 2.3, the Order shall form part of the Contract. Any reference in these General Terms to 'the Order' shall be to the relevant Order for the Service and/or Goods in question.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these General Terms and the Product Specific Terms.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract in respect of that Order shall come into existence (**Order Commencement Date**). Without prejudice to the Customer's rights to terminate the Contract pursuant to clause 15, the Customer cannot cancel an Order after it has been accepted.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Subject to clauses 2.5 and 2.6, and in the event of conflict, the General Terms are to be read in priority to the Product Specific Terms and any document incorporated by reference and the document higher in the order of precedence will prevail to resolve the conflict.
- 2.6 A provision in the Specific Terms shall override a provision in the General Terms with which it is in conflict if and only if the provision in the Specific Term expressly refers to, and states its intention to override, the provisions of the Conditions.
- 2.7 A Specific Term shall only amend a provision in the General Terms as regards the transaction effected by that Order and shall not amend the General Term generally or in respect of the

transaction effected by any other Order. Any samples, drawings, descriptive matter or advertising or third party material (including but not limited to tariff or call rate sheets) issued by the Supplier or a Network Provider and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's or a third party's or Network Provider's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.8 These General Terms apply to the Contract to the exclusion of any other terms (other than the Product Specific Terms and the Specific Terms) that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.9 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

2.10 All of these General Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.11 These General Terms shall apply to Services supplied by Vivio Connect and pursuant to a Network Provider Agreement, unless expressly stated to apply solely to one.

3. GOODS

3.1 The Goods are described in the Order as modified by any applicable Goods Specification.

3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements or the relevant Network Provider.

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4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**), at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods or the effecting of a Connection are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods or the effecting of a Connection that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its sole liability shall be to reimburse to the Customer the price paid for the Goods (if any). The Supplier shall not have any such liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the

Customer that the Goods were ready; and

- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 3 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- ### 5. QUALITY OF GOODS
- 5.1 The Customer has selected the Goods using its own skill and judgement and accepts responsibility for doing so. The Supplier does not warrant that the Goods will be fit for purposes intended by the Customer or that use of the Goods will be uninterrupted or error free.
- 5.2 The Supplier shall pass on the benefit of any warranties that the Supplier obtains from the manufacturer of any Goods supplied by the Supplier to the Customer. For the avoidance of doubt, this does not operate as an assignment of any of the Supplier's rights or the appointment of the Customer to act on behalf of the Supplier. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- ### 6. TITLE AND RISK
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to Goods shall pass upon the last of the following to occur:

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- (a) Where the Customer is party to a Network Provider Agreement, title to the Goods shall not pass to the Customer until the fulfilment of any minimum term of any Network Provider Agreement.
- (b) Where the Services include Vivio Connect, title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums;
- (c) Where the Goods have been acquired by use of Incentives, title to the Goods shall pass to the Customer upon the expiry of the Minimum Period.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (c) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(m); and
- (d) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(m), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
- (i) require the Customer to deliver up all Goods in its possession
- which have not been resold, or irrevocably incorporated into another product; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. SUPPLY OF SERVICES**
- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects and, (other than those Services to be provided under the Network Provider Agreement), using reasonable care and skill.
- 7.2 The Customer has selected the Services using its own skill and judgement and accepts responsibility for doing so. The Supplier does not warrant that the Services will be fit for purposes intended by the Customer or that use of the Services will be uninterrupted or error free. The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements or the relevant Network Provider.
- 7.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.5 Where any element of the Services is to be provided by the Network Provider and/or any other third party the Customer shall enter into any further agreements required by the Network Provider and/or such third party in respect of such Services.
- 7.6 The Supplier warrants to the Customer that the Services (other than those to be provided under the Network Provider Agreement) will be provided using reasonable care and skill.
- 7.7 The Supplier shall have the right to substitute the Services provided where there is no negative

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material effect to the nature or quality of the Services and the Supplier shall notify the Customer in any such event. Such changes may include but are not limited to the substitution of any Services provided under a Network Provider Agreement with Vivio Connect which shall then be governed solely by these terms and incorporated documents.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (h) be responsible for the safe keeping and safe use of any Goods provided to it during the term of the Contract. In particular, the Customer agrees during the term of the Contract to use all

Goods with reasonable care in accordance with their relevant operating specifications or manufacturer's instructions, and not to use any Goods in conjunction with any equipment which the Supplier, or the manufacturer of the Goods, did not supply or otherwise approve of in advance;

- (i) comply with its obligations pursuant to the Contract and the Network Provider Agreement and any further terms and conditions of the Network Provider from time to time, such further terms and conditions can be found at; for O2: <https://www.o2.co.uk/termsandconditions/business>, for Vodafone: <https://www.vodafone.co.uk/terms-and-conditions/>, for EE Small Business: <https://ee.co.uk/business/small/help/terms-and-conditions/business-terms-and-conditions/>, for EE Corporate: <https://ee.co.uk/content/dam/ee-help/Help-PDFs/Business-PDFs/General-Terms-and-Conditions-for-Business-Customers.pdf>.

8.2 The Customer shall use all applicable Goods in accordance with the Act. The Supplier shall not be under any obligation to connect or keep connected any Goods or equipment if it does not comply with the Act or if in the reasonable opinion of the Supplier it is likely to cause death, personal injury, and damage or to impair the quality of the Services.

8.3 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or

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indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8; and

- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.4 In relation to the use of Vivio Connect the Customer agrees:

- (a) to use the Services in accordance with all laws and any direction of OFCOM or other competent authority;
- (b) to use the Services in accordance with the Contract and such other conditions or instructions as may be imposed from time to time by law or the Supplier's supplier;
- (c) not to cause any attachments other than those approved by Law to be connected to the Services;
- (d) not to make or attempt to make fraudulent, improper, or immoral use of the Services, nor to use or attempt to use the Services in breach of any Law or with the intent to avoid the payment, in whole or in part, or any charges; and
- (e) not to resell the Services, except to members of its Group from time to time. The Customer shall be responsible for any act, omission or breach of the Contract by members of its Group as if it were committed by the Customer.

8.5 The Customer permits the Supplier to use information about the use of the Services by the Customer (including origin, destination, duration, route and time of calls) to perform its obligations under the Contract, maintain or upgrade the Service and produce anonymised statistics to assist the Supplier or the Supplier's suppliers in their network and business planning. The Supplier may also share such information with its suppliers for fraud prevention purposes.

9. CHARGES AND PAYMENT

9.1 Subject to clause 9.2, the price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's prevailing price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of additional packaging, insurance,

transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 In the case of Mobile Phone Equipment which is the subject of a Network Provider Agreement, if the Customer terminates the Network Provider Agreement prior to the expiry of any minimum term in the Network Provider Agreement, at the Supplier's election:-

- (a) the Customer shall upon demand pay to the Supplier the original SIM free retail price of the Mobile Phone Equipment as at the date of the relevant Network Provider Agreement;
- (b) the Customer shall upon demand repay to the Supplier any monies or cash equivalent provided by the Supplier to the Customer for the purchase of Mobile Phone Equipment; and/or
- (c) the Supplier may reduce including to zero any balance on any account (including Incentives) held by the Supplier in respect of the Customer for the purposes of the purchase of Mobile Phone Equipment.

9.3 The Charges shall be payable to the Supplier and/or the Network Provider as set out in the Order. If no charges are quoted in the Order the Supplier's and the Network Provider's charges shall be on their prevailing rates and/or a time and materials basis from time to time:

- (a) the Airtime Charges shall be calculated in accordance with the Supplier's or the Network Provider's standard rates, as notified to the Customer upon request;
- (b) the Management Charge shall be chargeable from the expiry of the Minimum Period;
- (c) the Supplier's daily fee rates for each individual person are calculated on the basis of a seven-hour day from 9.00 am to 5.00 pm worked on Business Days;
- (d) the Supplier shall be entitled to charge an overtime rate of 150% per cent of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.3(c); and
- (e) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals

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whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.4 The Supplier reserves the right to:

- (a) increase the Charges by the annual percentage change over the previous twelve months in the general index of retail prices (all items including mortgage interest) (as published in the monthly digest of statistics produced by the Central Statistical Office or any index that supersedes or replaces that). Such increase may only take place once in a twelve month period; and
- (b) increase the price of the Goods by giving notice to the Customer at any time before delivery, and/or increase the Charges for the Services by giving notice to the Customer at any time, to reflect any increase in the cost of the Goods and/or Services to the Supplier that is due to:
 - (i) the Network Provider;
 - (ii) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other material costs);
 - (iii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iv) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.5 The Customer acknowledges that upon the expiry of the Minimum Period, any discount or incentive

programs to which Customer was previously entitled shall expire and the charges shall automatically revert to the prevailing charges of the Supplier (available at www.vivio.co.uk/connect-rates-january) and the Network Provider (as applicable) from time to time. Such expiry of any discount or incentive program shall not constitute fee increases.

9.6 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, unless stated otherwise in the Order, the Supplier shall invoice the Customer monthly in arrears. The Customer shall also be liable to pay charges to the Network Provider in respect of services provided by the Network Provider directly to the Customer pursuant to the Network Provider Agreement.

9.7 The Customer shall pay each invoice submitted by the Supplier:

- (a) unless stated otherwise in the Order within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

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9.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. INCENTIVES

10.1 Without limiting any of its other rights or remedies, if (i) the Supplier does not receive from the Network Provider the expected amount of monies towards the payment of the Incentives or (ii) the Customer, at any time, fails to perform, delays in performing or breaches any of its obligations under the Contract or under the Network Provider Agreement or fails to fulfil any minimum airtime requirements of the Network Provider Agreement, the Supplier may: (a) withhold any Incentives otherwise due to the Customer under the Contract, (b) otherwise set-off any amount owing to the Customer by it against the payment of any Incentives, (c) claim repayment of the value of any Incentives paid to the Customer and/or (d) cease payment of any future Incentives to the Customer.

10.2 Where, as part of any Incentive, the Supplier is to provide a fixed price line rental via cash-back or line credit, this fixed price is dependent on the Network Provider not increasing the price of its services. Where the price of the services is increased by the Network Provider, the amount of payments payable to the Customer by the Supplier as part of any Incentive will not increase and the Customer will remain liable to the Network Provider for any increased charges.

10.3 The Customer shall repay any Incentives paid to it where the Supplier has not been able to complete an Order due to Force Majeure and the Supplier is entitled to and exercises such right to terminate the Contract as a result.

10.4 The Customer must utilise all Incentives during the Minimum Period. Any unused Incentives shall expire at the end of the Minimum Period and for the avoidance of doubt the Supplier shall not be obliged to pay to the Customer any further Incentives or an amount equal to the unused Incentives.

10.5 Subject to the foregoing, the Incentives shall be payable by the Supplier to the Customer as set out in the Order. In the event of an incomplete or absent reference the Incentives shall be

payable in accordance with the Supplier's custom and practice from time to time, which as at the Commencement Date is as follows:-

- (a) hardware funding may be drawdown by the Customer immediately;
- (b) other Incentives shall be payable in equal monthly instalments during the Minimum Period; and
- (c) small amounts of Incentives in respect of connections to a Network Provider shall be payable 120 days after the respective connection has been made.

11. FAIR USAGE POLICY

A fair usage policy may apply to the element of the Services. The Supplier will monitor the usage of the Services. If at the reasonable discretion of the Supplier or the Network Provider, it is determined that the Customer's usage materially exceeds the fair usage threshold in any month, the Supplier may contact the Customer to advise the Customer that its excess usage exceeds its fair usage policy. If the excessive usage continues to exceed the threshold after receipt of a request from the Supplier to desist from or alter the nature of such usage, the Supplier reserves the right to charge the Customer for the excessive element of its usage or to modify or suspend the Customer's use of the Service entirely or in part in certain circumstances including but not limited to circumstances which amount to persistent abuse of the Service. The fair usage threshold for each Network Provider can be found at; for O2:

<https://www.o2.co.uk/termsandconditions/business/business-fair-usage-policy-2017>, for Vodafone: <https://www.vodafone.co.uk/cs/groups/public/documents/document/vfcon090964.pdf>, for EE Small Business: https://ee.co.uk/content/dam/ee-help/Help-PDFs/Business-PDFs/B2BLegal1201_EE_Price_Guide_for_Small_Business_30_03_2016.pdf, for EE Corporate: <https://ee.co.uk/content/dam/ee-help/Help-PDFs/Business-PDFs/b2blegal1205-ee-price-guide-for-large-business-20170105.pdf>.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

12.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the

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- Services or the Goods, the Customer's use of any such Intellectual Property Rights is conditional on either the Supplier or the Customer obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer or the Customer to use such rights.
- 12.3 All Supplier Materials are the exclusive property of the Supplier.
- 13. CONFIDENTIALITY**
- A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 13 shall survive termination of the Contract.
- 14. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 14.1 Nothing in these Contract shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 14.2 Subject to clause 14.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of opportunity, loss of data or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) unless expressly, stated otherwise in the relevant Product Specific Terms or the Specific Terms, the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 50% (fifty per cent) of the Charges paid by the Customer pursuant to the Order in respect of which the claim arises.
- 14.3 Except as expressly provided in the Contract, all representations, conditions and warranties, whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.4 The Supplier shall not under any circumstances be liable to the Customer in respect of:-
- (a) any element of the Services which is the subject of the Network Provider Agreement;
 - (b) the performance or failure to perform by the Network Provider of its obligations pursuant to the Network Provider Agreement.
- 14.5 The Customer acknowledges that, owing to the nature of telecommunications equipment and computer software, the Services will not be fault-free or without interruption and that the quality and coverage of the Services may be adversely affected by local geography, topography and physical features (such as signal deflection by buildings), atmospheric General Terms, the

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availability and capacity of the Network or other networks (which will be shared with other users) the Customer's (or the users of the Services') equipment, the Customer Blackberry Equipment or the RIM Data Relay.

14.6 The Supplier shall have no liability for any loss or damage sustained by the Customer relating to any of the following:

- (a) the security of the Customer's (or the users of the Services') equipment, the Customer Blackberry Equipment, the internet, 'WAP' sites, web content servers, applications or public networks;
- (b) any loss, or lack or failure of security, of data transmitted or received using the Services;
- (c) any use of software in relation to the Services which is not approved for use with the Services by the Supplier;
- (d) any incompatibility of the Customer's (or the Services users') equipment with the Services, and the Customer shall Indemnify the Supplier against any such incompatibility; or
- (e) any matter referred to in clause 13.5

14.7 The Supplier shall have no Liability for any cost arising from fraudulent use of the Services and the Customer shall be liable for any costs relating to any use of the Services (including telephone calls).

14.8 If the Customer notifies the Supplier of a claim in respect of a failure by the Supplier to provide a Service in accordance with the Contract, and the Customer then agrees a new minimum term period with the Supplier in respect of that Service, that agreement shall be in full and final settlement of the Customer's claim and the Customer shall be deemed to have irrevocably waived its rights in relation to that claim.

14.9 This clause 14 shall survive termination of the Contract.

15. TERMINATION

15.1 Subject to clauses, 8.3 and 14.2, the Contract for each Order shall commence on the Commencement Date and shall continue until either party gives the other party not less than 30 days' written notice, such notice not to expire prior to the end of the Minimum Period.

15.2 Without limiting its other rights or remedies, each party may terminate the Contract for all

Orders with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party takes any steps to or suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes or takes any steps to make a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) any steps are taken to or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or

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- a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(b) to clause 15.2(i) (inclusive);
- (k) the other party takes any steps to suspend, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract in respect of all Orders with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 15.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under all Order of the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract or a Network Provider Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 15.5 Without prejudice to any of the Supplier's other rights and remedies, the Supplier may no notice to the Customer disconnect any or all of the Services or suspend performance of any or all of its obligations under, or terminate, the Contract for all Orders in the following circumstances without liability:
- (a) if any license or permission to operate or use the Network or any part of it is revoked or terminated for any reason;
- (b) if the operation of the Network is terminated or if the provision of the Services to the Supplier is discontinued for any reason;
- (c) any unused Incentives shall expire and for the avoidance of doubt the Supplier shall not be obliged to pay to the Customer any further Incentives or an amount equal to the unused Incentives;
- (d) if the Customer does or allows to be done anything which in the Supplier's reasonable opinion will or might jeopardise the operation of the Services or the Network; or
- (e) if the Supplier reasonably suspects the Services are being used in a manner prejudicial to the interests of the Customer or the Supplier
- 15.6 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all of the Supplier Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15.7 The Supplier may exercise its rights pursuant to this clause 15 either in respect of all Orders under the Contract or in respect of the Order in respect of which the breach has arisen.
- 16. FORCE MAJEURE**
- 16.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service, Network Provider or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, subcontractors or Network Providers.
- 16.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 16.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 2 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 17. DATA PROTECTION**
- 17.1 The following definitions apply:
- (a) Data Protection Legislation means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.
- (b) the terms " Controller", " Processor", "Data Subject", "Personal Data" and "processing" bear the respective meanings given them in the Data Protection Legislation.
- (c) Data includes personal data.
- (d) Customer Personal Data and Supplier Personal Data mean any Personal Data provided by or on behalf of the Customer or the Supplier, respectively.
- 16.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 16.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor.
- 16.4 Without prejudice to the generality of clause 16.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 16.5 Without prejudice to the generality of clause 16.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to

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process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or the Supplier has provided appropriate

safeguards in relation to the transfer;

- (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 16 and allow for audits on reasonable terms by the Customer or the Customer's designated auditor.

16.6 The Customer consents to the Supplier appointing third-party processors of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third

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- party's standard terms of business. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 16.6.
- 16.7 Either party may, at any time on not less than 30 days' notice, revise this clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 16.8 Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.
- 18. DISPUTE RESOLUTION**
- 18.1 If a dispute arises under this agreement (**Dispute**), including any Dispute arising out of any amount due to a party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process (**Dispute Notice**).
- 18.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, then each party will promptly (but no later than five Business Days thereafter):
- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this agreement (**Designated Representative**); and
 - (b) notify the other party in writing of the name and contact information of such Designated Representative.
- 18.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured.
- 18.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, then either party may proceed with any other available remedy.
- 18.5 Notwithstanding the foregoing, either party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.
- 19. GENERAL**
- 19.1 Assignment and other dealings.**
- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
 - (b) The Customer shall not, without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2 Notices.**
- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-

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- mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 19.3 **Severance.**
- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 19.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.7 **Variation.** Except as set out in these General Terms, no variation of the Contract, including the introduction of any additional terms and General Terms other than the Product Specific Terms shall be effective unless it is agreed in writing and signed by the Supplier.
- 19.8 **Rights and remedies.** Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.9 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 19.10 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
20. **SUSPENSION OF SERVICES**
- 20.1 The Supplier may suspend any or all of the services, or performance of its obligations under the Contract, in the following circumstances without liability:
- (a) With prior notice where reasonably practicable, if the Supplier is obliged to comply with an order, instruction or request of Government, an emergency services organisation or other competent administrative authority;
- (b) On notice, if the Supplier reasonably believes that any member of the Customer's Group will not make payment which is to fall due to the Supplier's Group under any Group Agreement; or
- (c) On notice, if a Credit Limit is exceeded.
- (d) during any technical failure, modification, repair, testing or maintenance of the Network or other equipment by which the Services are provided, or in the case of emergency of for supplier operational reasons; or
- (e) if the operation of the Network is suspended or if the provision of the

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- Services to the Supplier is suspended for any reason (including during any network 'freeze' period)
- 20.2 The Customer shall remain liable for the Charges for the Services for the duration of any suspension.
- 20.3 The Supplier shall have no liability to the Customer for any charges incurred by the Customer for the use of other telecommunications services whether provided by the Supplier or any other person during any period of suspension of the Services under the Contract.
- 21. USE OF HANDSETS AND SIM CARDS**
- 21.1 The Customer shall:
- (a) Notify the Supplier as soon as practical if it is aware that any handset or SIM Card is lost or stolen;
 - (b) not connect, or continue connection, to the Network of any GSM Gateway without the Supplier's prior written consent (at the Supplier's absolute discretion and subject to such terms and conditions as the Supplier may in its absolute discretion specify. The Supplier reserves the right to amend any such terms and General Terms from time to time on fourteen 7 days' notice to the Customer).
- 22. MINIMUM USAGE**
- 22.1 The Customer agrees to:
- (a) Meet or exceed the Total Connections;
 - (b) Use each Service until expiry of the Minimum Period; and
 - (c) Meet or exceed the Minimum Average Monthly Call Spend Per Connection for each Connection during each month of the Minimum Period. For the avoidance of doubt any expenditure after expiry of the Minimum Period shall not contribute to the Minimum Average Monthly Call Spend Per Connection.
- 22.2 If at any point during, or on expiry of, a Minimum Period the actual spend for a connection (excluding the Monthly Charge and VAT) in any month of the Minimum Period is below the Minimum Average Monthly Call Spend Per Connection, the Supplier may exercise any or call of the following rights:
- (a) Charge the Customer the difference between them;
 - (b) Adjust the pricing; and
 - (c) Require the Customer to reimburse a pro-rata portion of any related Credit.
- 22.3 The Customer's obligations under clause 20.1 shall not be affected by any delay or failure in the transfer to the Supplier of any telephone number whether caused by the Customer, the Previous Service Provider, any third party or any Force Majeure Event.
- 22.4 Within thirty (30) days of the Order Commencement Date:
- (a) the Customer shall obtain PACs for the telephone numbers specified in the Contract from the Previous Service Provider, and provide them to the Supplier, to enable the relevant telephone numbers to be transferred to the Supplier; and
 - (b) if the Total Connections is not achieved (through no act or omission of the Supplier), the transfer of any telephone number to the Supplier is a Migration when stated in the Contract to be a Port, or the parties agree after the Order Commencement Date to reduce the Total Connections by more than 10%, then the Supplier may reduce any related credit and/or adjust the pricing and/or the Incentives at its reasonable discretion.
- 22.5 The Minimum Average Monthly Call Spend Per Connection shall be unaffected by any variation in the Charges, including by an Industry Price Change, or by the transfer of any part of the Services to a third party service provider pursuant to Law. Following an Industry Price Change, if requested by the Customer, the Supplier shall:
- (a) undertake call analysis of the Customer's usage of the Services by minutes and by cost;
 - (b) discuss with the Customer its telecommunications requirements and usage generally; and
 - (c) provide to the Customer alternative terms for its continued use of the Services, including charges, Credits, Minimum Average Monthly Call Spend Per Connection and Minimum Term.
- 23. INTERNET ACCESS AND SOFTWARE**
- 23.1 The Services may be used by the Customer to link into web sites, resources and networks

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- worldwide. The Supplier neither accepts responsibility for their content or any services offered nor endorses their content. The Customer agrees to comply with the terms and conditions and acceptable use policies of such web sites, resources and networks.
- 23.2 Where Internet access forms part of the Services, the Customer agrees that:
- (a) all visual, textual or other information, whether publicly posted or privately transmitted ("Information") is the sole responsibility of the person from whom such Information originated;
 - (b) the Customer is entirely responsible for all Information uploaded, downloaded, emailed or otherwise transmitted via Internet access;
 - (c) all dealings with, and interests in, promotions, services or merchants found by the Customer using the Services, unless otherwise stated, are solely between the Customer and the person with whom the Customer is dealing; and
 - (d) access to secure financial transactions will be dependent on the type of hardware and the third party supplier of content.
- 23.3 The Supplier shall not be liable for advice, instructions or directions which it gives to the Customer where the Services are used to link into web sites, resources or networks worldwide. Such advice, instructions and directions may relate, without limitation, to configuration of the Services on hardware of the Customer.
- 23.4 Any software provided in conjunction with the Equipment or Service is and shall remain the property of the licensor and (if no licence is provided in conjunction with the software) the Customer is granted a non-exclusive, non-transferable licence to use the software solely in conjunction with the relevant Equipment and Service (as applicable). The Customer shall neither copy the software, make modifications to nor attempt to reverse engineer or decompile the software except to the extent permitted by Law, and shall comply with the relevant licence.
- 24. ADDITIONAL ORDERS AND AUTHORITY**
- 24.1 The Customer may place an Additional Order via e-mail or via other electronic means as specified by the Supplier from time to time. Each accepted Additional Order shall be subject to, and shall form part of, the Contract.
- 24.2 The Supplier shall have no obligation to confirm whether an e-mail was validly sent by the Customer if it appears to originate from the Customer's Internet domain name.
- 24.3 The Customer warrants that 'authorised contacts' specified in the Contract or entered on any the Supplier website by the Customer are authorised to enter into Additional Orders on behalf of the Customer.
- 24.4 The Customer shall keep secure any password provided by the Supplier and acknowledges that any instruction given to the Supplier by a person using this password shall be deemed to have been made by the Customer.
- 25. VARIATION**
- 25.1 The Supplier may vary a Contract, or introduce changes or updates to the Services, as required by its suppliers or to take account of changes in Law by giving notice to the Customer. Except as expressly permitted under the Contract, any other variation to a Contract shall be in writing and signed by a duly authorised representative of each party.
- 26. DATA USAGE**
- 26.1 The customer acknowledges and agrees that the Network Operator's call detail records shall constitute proof of data usage without further detail of Customer's activity relating to such data use.
- 27. COVERAGE**
- 27.1 For an estimate of speeds the Customer may experience in the UK, the Customer has to refer to the Network Operator's coverage checker at <https://www.vodafone.co.uk/explore/network/uk-coverage-map/or> <https://www.o2.co.uk/coverage>. If a Customer with 10 or less employees (a small business Customer) experiences speeds that fall below those set out on the Network Operator's coverage checker for an unreasonable period, the Customer may be entitled to a credit.
- 28. HOW WE USE YOUR PERSONAL DATA**
- The Privacy Notice at <http://www.vivio.co.uk/terms> explains how the Supplier uses and manages the information it holds about you and your employees.