

# TERMS & CONDITIONS

## 1. DEFINITIONS

1.1. In this Agreement where the context admits:

**Acceptance** means acceptance in accordance with Clause 7 and “Accepted” shall be construed accordingly;

**Acceptance Criteria** means the acceptance criteria specified by the Client to VTSL in writing prior to the Installation which are agreed in writing by VTSL (if any);

**Acceptance Tests** means those tests proposed by the Client and agreed in writing by VTSL prior to the Installation jointly agreed between the parties to verify that the Hardware complies with the Acceptance Criteria (if any);

**Business Day** means a day other than a Saturday, Sunday or public holiday in England;

**Claims** mean all costs, claims, damages, losses, demands and expenses (including reasonable legal expenses);

**Communications Services** means the provision of cloud hosted Voice over IP telecommunications services;

**Deliverable(s)** means the Hardware and/or Network Services;

**DPO** means Data Protection Officer;

**Installation** means the provision of Network Services and Hardware, installed by VTSL or an accredited partner; VTSL are not responsible for any third party equipment such as Network Switches or CAT5/6 cabling unless they are supported under a specified agreement;

**Effective Date** means the date the order form is signed by The Client

**Fees** mean those fees and expenses reserved by clause 6 of this Agreement;

**GDPR** means the General Data Protection Regulation;

**Hardware** means the equipment provided to the Client under this Agreement by VTSL, installed at the Installation Address and rental of all associated software licenses required to use the Hardware provided by VTSL;

**Installation Address** means the address agreed in writing by VTSL with the Client for installation of the Deliverables or, as the case may be, any other premises in which for the time being the Deliverables are installed with the consent of VTSL by the direction of the Client (including in each case any pipes wires cables conduits or other conducting media serving the Installation Address) and which the Client warrants as a continuing warranty in each case with full title guarantee may be accessed by VTSL its agents and contractors with or without plant for purposes of carrying out or completing the Installation, maintenance or removal of the Deliverables at any time without infringing the rights of any third party;

**Maintenance Services** means any maintenance required to be carried out to the Hardware by VTSL as an express written term if this Agreement;

**Minimum Term** means the period of the contract term stated on the Order Form from the date of the first Monthly Invoice;

**The Services** means the provision of Communications Services, Managed Support Services, Hardware and Network Services under the Agreement including termination to the Public Switched Telephone Network;

**Network Services** means all access network Services delivered to the Installation Address by VTSL including all inbound and outbound call traffic;

**Order Form** shall mean the order form signed by the Client and forming part of this Agreement detailing (inter alia) the Install/Setup, Equipment Purchase, Equipment Rental, Telephony Services, Network Services and Extended Warranty fees forming part of the Agreement hereto or otherwise notified to the Client in writing on or before the Effective Date (as the same may be amended or supplemented from time to time);

**Rental Payments** shall mean the sums payable for the rental of hardware set out in the order form;

**Refusal Notice** means a notice issued by the Client identifying

(i) the discrepancy between the Hardware and the relevant Acceptance Criteria; and

(ii) the changes necessary to ensure that the relevant Hardware complies with the Acceptance Criteria;

**Technical Specification** means the technical specification in respect of the Hardware (if any), agreed between the Client and VTSL on or before the Effective Date;

**Warranty Period** means, in respect of all Hardware comprised within an Installation, a period of 12 months from the Acceptance (or if applicable deemed Acceptance) of the Installation. For equipment rented from VTSL the warranty period is for the Duration of this agreement.

1.2 References to Clauses are to clauses of this Agreement.

1.3 Where any party to this Agreement comprises more than one person at any time then obligations of that party hereunder shall be joint and several obligations.

## 2. AGREEMENT

2.1 This Agreement is made on (but not before) the Effective Date.

## 3. SERVICES

3.1 VTSL shall provide The Services to the Client in consideration of which the Client shall pay the Fees and provide reasonable access to VTSL its employees, partners and contractors at the Installation Address (to install maintain and remove the Services).

3.2 VTSL shall provide The Services;

- (a) using reasonable skill and care; and
- (b) in accordance with good industry practice.

3.3 VTSL shall (subject as hereinafter provided in clauses 3.4, 3.5 and 5) supply maintenance for The Services (either remotely or by physical intervention at the option of VTSL) without cost to the Client during VTSL's normal working hours of 08.30 to 17.30 hours on Business Days.

3.4 Unless caused by the negligent act or omission of VTSL, VTSL shall not be obliged to carry out any maintenance to the Hardware outside normal working hours nor where required as a result of any unauthorized act or omission or default of the Client or any third party. Including without limitation any failure to adhere to manufacturer's instructions or guidelines, electrical surges or failures in the public telecommunication system, damage to the hardware caused by vibration, unauthorized re finishing or re painting or relocation or removal of the Hardware nor where arising as a result of any matter outside the reasonable control of VTSL, but any such maintenance provided by VTSL in such circumstances shall be provided at the VTSL rates and terms then applicable at the date when the relevant maintenance is provided.

3.5 VTSL cannot guarantee that The Services will be free of faults or interruptions, timely or secure to the extent The Services may be affected by things VTSL cannot control, such as (without limitation) lack of network capacity, physical obstructions or atmospheric conditions.

## 4. RISK

4.1 Risk in (but not title to) the Deliverables comprised in The Services shall pass on delivery and the Client will be responsible for the security, safe keeping and insurance of all Deliverables from the time each item is delivered to the Installation Address. The Client is advised to notify its insurers accordingly and agrees that the Client will insure and keep insured the Deliverables in the full reinstatement value and provide reasonable evidence thereof on demand and procure that the interest of the owner of the Deliverables is noted on the relevant policy.

## 5. WARRANTY

5.1 VTSL warrants that during the Warranty Period, the Hardware shall comply with the Technical Specification.

5.2 If during the Warranty Period, the Hardware fails to function in accordance with the Technical Specification, then subject to the due observance and performance of this Agreement by the Client and clauses 3.4 and 3.5 of this Agreement, VTSL shall repair any defects in the Hardware and/or provide Maintenance Services in accordance with clause 3.3 at no extra charge to the Client, subject always to clauses 3.4 and 3.5 or unless the defect is otherwise caused by the Client or any third party or unless the Client has modified the Hardware or any Deliverable in any way or failed to adhere to the terms of the manufacturer's instructions.

5.3 VTSL's obligations under Clause 5.2 shall be the Client's sole and exclusive remedy in respect of any breach of Clause 5.1. VTSL shall have no further liability to repair any Hardware after the expiry of the Warranty Period unless

the Client has entered into a separate support contract with VTSL in respect of the Hardware.

5.4 The limited warranty set out in Clause 5.1 is given in lieu of all other warranties. Except as expressly set out in this Agreement, any representations, warranties, terms and conditions (whether implied by law, statute, custom or otherwise) are hereby expressly excluded to the maximum extent permitted by law.

## **6. RENTAL PAYMENTS, FEES AND EXPENSES**

6.1 The first Rental Payment shall fall due within one month from the Acceptance date and continue on the same date each month thereafter throughout the Minimum Term and until this agreement is terminated;

6.2 The Fees shall be payable in accordance with the Order Form for use of The Services against invoices submitted by VTSL to the Client and variable call charges will be calculated in accordance with usage recorded by call logging or recording data of VTSL or its service providers which data shall be final and binding upon the parties to this Agreement.

6.3 VTSL invoices for Rental Payments and Fees shall be payable by direct debit and prompt payment shall be an essential condition of this Agreement. Where any direct debit payments are withheld because of insufficient Client funds then without prejudice to the rights of VTSL hereunder VTSL reserves the right to charge a reasonable administration fee of not less than £15 plus VAT in relation to each such non-payment.

6.4 The Rental Payments and Fees are exclusive of VAT and the Client shall pay the VAT payable in respect of them in the amount and in the manner prescribed by law from time to time.

6.5 All invoices may be rendered by VTSL at any time and shall be payable by the Client in full, without set off, deduction, abatement or withholding on any grounds on the due date of an invoice. VTSL shall be entitled to charge interest at a rate of 5% above the base rate of the ECB on all outstanding amounts from the due date until the date payment is received, whether before or after judgement.

6.6 VTSL reserves the right to vary or increase the fees by giving not less than 1 months in writing to the Client and to the fullest extent permissible by law. This Agreement shall remain in full force and effect following such variation or increase whether arising as a result of any ruling or instruction or levy of any competent authority or otherwise.

6.7 VTSL or its partners may (but is not obliged) to carry out Installation outside normal working hours where requested by the Client, but where VTSL or its partners agrees in writing to do so the Client shall be liable to pay an increased installation charge to be confirmed in writing by VTSL prior to Installation.

6.8 The Client by entering into this Agreement unconditionally and irrevocably recognises acknowledges warrants and confirms that;

- (i) it authorises its lines to be connected to another service provider;
  - (ii) it agrees to pay all call charges levied by any telecommunications service provider and to adhere to all terms and conditions applicable to those call charges;
  - (iii) the execution of this Agreement by the Client does not and will not infringe the rights of any third party;
- there is no further act matter or thing outstanding on the part of the Client or its advisors that would or might impede or preclude the Installation taking place at any time from the Effective Date including without prejudice to the generality of the foregoing any outstanding issues relating to any third party consent required to use The Services from the Installation Address or otherwise relating to the suitability design construction use or enjoyment of the Installation Address for the purposes of using The Services from the Installation Address.

## **7. ACCEPTANCE**

7.1 VTSL shall notify the Client by email or otherwise in writing of the completion of the work required to install the Hardware and/or Network Services at the Installation Address ("Installation").

7.2 On receipt of notification of the completion of the Installation, the Client shall be entitled in good faith to carry out Acceptance Tests on the Deliverable(s) comprised in the Installation. If (a) the results of the Acceptance Tests demonstrate that the Deliverable(s) in question does not comply with the Acceptance Criteria in all material respects,

and (b) the Client has served a Refusal Notice on VTSL within 5 days of receipt of the Deliverable(s) in question then Clause 7.3 shall apply. In all other circumstances, following the completion of the Acceptance Tests (or within 7 days of the date of Installation if no such Acceptance Tests are carried out by the Client), the Installation and the Deliverable(s) comprised thereby shall be deemed to be Accepted, and VTSL may invoice the Client for any Fees and expenses as being contingent on Acceptance of the Deliverable(s) in question.

7.3 If the Client serves a Refusal Notice on VTSL pursuant to Clause 7.2, VTSL shall be entitled without liability to the Client at the sole discretion of VTSL either;

(i) to remove and or uninstall the relevant Deliverable(s) without liability to VTSL; or,  
(ii) to modify the Deliverable(s) identified in the Refusal Notice in order to ensure that such Deliverable(s) complies with the relevant Acceptance Criteria in all material respects. VTSL shall then notify the Client by email or otherwise in writing within a reasonable period of time that the Deliverable(s) has been so modified. The Client shall then be entitled to perform a further set of Acceptance Tests on the relevant Deliverable(s) in accordance with Clause 7.2. This process shall be repeated until the earlier of:

(a) Acceptance of the Deliverable(s) (in accordance with Clause 7.2); or  
(b) the termination of the relevant Installation pursuant to Clause 11.3 (e) (which such termination shall be without prejudice to clause 10.3.

## 8. THE CLIENT'S OBLIGATIONS

8.1 The Client must at all times, ensure that The Services are accessed and used:

(a) only in accordance with this Agreement, any user guides, and any other instructions VTSL gives to the Client from time to time; and  
(b) only in accordance with all relevant legislation and applicable Health and Safety legislation, regulations, codes of practice, licenses, guidance and other requirements of any relevant government or governmental agency.

8.2 The Client shall not use, nor allow any other(s) to use, The Services:

(a) for any improper, immoral, illegal or unlawful purpose;  
(b) to store, send, reproduce or receive a communication which is, or is intended to be, a hoax call to emergency Services, or which is defamatory, offensive, abusive, indecent, obscene or menacing;  
(c) to violate or infringe any rights of, or to cause Annoyance, inconvenience or anxiety to, or to interfere with or damage, any other person;  
(d) in such a way that may impair, interfere with, damage or affect the operation or quality of The Services or the relevant Deliverable; or  
(e) fraudulently or illegally.

8.3 The Client:

(a) shall keep the Hardware in good repair and shall not alter or move the Hardware, 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;  
(b) shall not connect nor permit the connection of the Hardware into any equipment which is not compliant with applicable health and safety regulations or other applicable legislation for the time being in force (and without limitation VTSL reserves the right to suspend withdraw or refuse to supply The Services in the event that VTSL in its absolute discretion deems such equipment non compliant as aforesaid);  
(c) shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice the Hardware in any way; and  
(d) will allow VTSL and its representatives to inspect, test, modify, change, add to, replace or remove any such Hardware on reasonable notice.

8.4 The Client shall provide all reasonable assistance and information with regard to the supply of The Services.

8.5 The Client hereby irrevocably authorizes VTSL to act on the Client's behalf in all dealings with the operator of any telecommunications network or system in connection with any matter that enables VTSL to provide or to continue to provide the Client with The Services (including without limitation giving all nominations notices and authorizations to any telecommunications provider to facilitate The Services via that provider).

8.6 The Client hereby consents to disclosure of all information of a confidential nature relating to the Client (and

authorizes such disclosures pursuant to applicable data protection legislation) for the purposes of administering this Agreement.

8.7 The Client will at all times during and following termination of this Agreement on demand indemnify and keep indemnified and hold harmless VTSL its officers, partners, agents, employees and contractors from and against all Claims together with all VAT due thereon arising as a result of any breach non-observance or non-performance of this Agreement by the Client or otherwise as a result of any act or omission of the Client.

## 9. VARIATIONS

9.1 The right is reserved to VTSL to make variations to Fees in clause 6

9.2 VTSL may vary the other terms of this Agreement at any time by posting the changes on its website and, if any variation of these terms and conditions is likely to cause material detriment to the Client, by giving the Client reasonable prior notice. VTSL will only do this if it has a valid reason, for example to reflect changing arrangements with any operator of any telecommunications network or system over which VTSL provides The Services or changing legal, regulatory or business requirements. In the event of any such change, the Client shall have the right to terminate this Agreement by giving VTSL 7 days' written notice. The Client agrees that if the Client does not serve such notice within 30 days after any variation(s) to these terms and conditions has been posted on VTSL Service's website or, in the case of a variation which is likely to cause material detriment, notified to the Client, the Client will be bound by the Agreement as varied.

## 10. SUSPENSION AND CANCELLATION

10.1 Without prejudice to the accrued rights of VTSL hereunder (including without limitation the right to terminate this Agreement on the terms hereinafter appearing) and without liability to the Client VTSL may at its discretion suspend the Client's access to The Services immediately:

- a) in the event of any breach (or suspected breach) of the terms of this Agreement by the Client or any other agreement to which the Client and VTSL are parties;
- b) if required to do so by the Government, an emergency service organization or any other competent body or authority;
- c) for repairs, maintenance or improvement; or
- d) if VTSL has good reason to suspect fraudulent activity or misuse of The Services.

10.2 In the event of suspension of The Services as aforesaid the Client shall pay for and indemnify VTSL on demand against all costs incurred in suspending and reconnecting The Services and shall be solely responsible for discharging any additional costs incurred by the Client as a result of suspension of The Services.

10.3 The Client acknowledges that it has no right to cancel this Agreement whether prior to or at any time following Installation. VTSL may (but is not obliged to) accept cancellation at any time prior to Installation on such written terms as VTSL may at any time prior to Installation in its sole discretion specify and where VTSL so agrees in writing (and without prejudice to the generality of the foregoing) the Client shall discharge on demand and indemnify VTSL from and against the cost incurred in the provision of the Hardware at the Installation Address.

## 11. TERM AND TERMINATION

11.1 This Agreement shall commence on the Effective Date and continue in full force and effect for the Minimum Term and shall thereafter continue in full force and effect until terminated by either party to this Agreement giving to the other not less than three month's notice in writing to that effect.

11.2 VTSL may terminate this Agreement immediately on giving notice in writing to the other in the event that the other is or becomes insolvent, meaning that a resolution is passed, or an order is made for the winding up of the other (other than for the purpose of solvent amalgamation or reconstruction) or the other becomes subject to an administration order, or a receiver or administrative receiver is appointed, or an encumbrancer takes possession of any the other's property, or the other suffers any analogous procedure under any foreign law.

11.3 VTSL may terminate this Agreement immediately on giving notice in writing to the Client in the event that:

- (a) the Client fails to pay any sums due under this Agreement or the Rental Agreement on the due date; or
- (b) the Client commits a material breach of this Agreement or the Rental Agreement which is not capable of remedy, or (where capable of remedy) fails to remedy such breach within 7 days of receipt from VTSL of notice requiring it to do so; or
- (c) VTSL reasonably believes the Client has provided false or misleading information to VTSL;
- (d) the Client ceases or threatens to cease trading;
- (e) VTSL is unable to install or continue to provide The Services.

## 12. EFFECT OF TERMINATION

12.1 Upon termination or expiry of this Agreement for any reason:

- (a) VTSL will have the right immediately to cease the provision of The Services; and
- (b) all sums payable by the Client to the date of termination shall become immediately due and payable; and
- (c) the Client shall pay to VTSL a termination sum equal to the Rental Payments and Fees which would have fallen due for the remainder of the Minimum Term, had this Agreement not been terminated; and
- (d) the Client shall deliver up the Hardware to VTSL in good repair and condition (fair wear and tear excepted) at such address in the United Kingdom as VTSL shall specify; and
- (e) termination shall be without prejudice to the accrued rights of the parties to the date of termination.

## 13. LIMITATION OF LIABILITY

13.1 Nothing in this Agreement shall operate to limit or exclude VTSL's liability for death or personal injury caused by its negligence, or for fraud.

13.2 Subject to (a) Clause 13.1 (where VTSL's liability is unlimited) and (b) save as provided in clause 5 of this Agreement VTSL Service's maximum aggregate liability for all claims made under or in connection with this Agreement (whether arising in contract, under statute or in tort (including in each case negligence) or otherwise shall be limited to 125% of the total sums paid or payable by the Client to VTSL under this Agreement up to the date on which the event(s) giving rise to the claim occurred.

13.3 VTSL shall not be liable to the Client for either (a) any loss of profits, loss of revenue, loss of data, loss of use, loss of anticipated savings or (b) any indirect, incidental, or consequential loss either of which arises in any way under or in connection with this Agreement, even if such part has been advised in advance of the possibility of such damages.

## 14. GENERAL

14.1 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.

14.2 Neither party shall be liable to the other for delays caused by an event beyond that party's reasonable control, such as fire, accident, labour dispute, floods, war, insurrection, riot, terrorism, act of government, act of God, but;

14.3 Each party shall use all reasonable efforts to minimise the extent of any such delay. In the event that such an event lasts for more than one month, either party shall be entitled to terminate this Agreement on giving notice in writing to the other.

14.4 The parties to this Agreement are independent contractors. Nothing in this Agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties to it.

14.5 VTSL may assign or transfer its rights under this Agreement to another party ("Assignee") without consent of the Client. If VTSL assigns or transfers all or any of its rights under this Agreement the Client will pay all Rentals and Fees to the Assignee without deduction, set-off or counterclaim irrespective of whether or not it is using the Hardware or The Services or for any reason whatsoever. The Assignee will have no obligations to the Client under this Agreement in relation to The Services described herein. VTSL will, however, continue to remain liable to the Client for the performance of The Services.

14.6 VTSL may without liability to the Client sub-contract its obligations in whole or in part under this Agreement in order to duly perform or procure the performance of the obligations of VTSL hereunder.

14.7 Neither party shall be deemed to have waived any provision of this Agreement unless such waiver is in writing and executed by a duly authorised officer of the waiving party. No waiver by either party of any provision shall constitute a waiver of such provision on any other occasion.

14.8 The invalidity or unenforceability, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of the remainder of such provision or of any other provision of this Agreement.

14.9 Clauses 4, 5, 6, 8, 13 and 16 shall survive expiration or termination of this Agreement.

14.10 This Agreement constitutes the entire agreement between the Client and VTSL relating to its subject matter to the exclusion of all other terms, and supersedes all previous arrangements, agreements, and drafts. The Client acknowledges that in entering into this Agreement it has not relied upon any pre-contractual representation not expressly included in this Agreement. VTSL shall not have any liability in respect of any pre-contractual representation innocently or negligently made. So far as permitted by law and except in the case of fraud, the Client acknowledges and agrees that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of terms of this Agreement (to the exclusion of all other rights and remedies including those arising in tort or under statute).

14.11 Save as provided above in relation to variations by VTSL this Agreement may not be amended unless such amendment is in writing and signed by both parties.

14.12 All notices and other communications in connection with this Agreement shall be in writing. Notice shall be deemed to have been received by a party when actually received in the case of hand delivery, or five (5) days after mailing by first class mail, postage prepaid, to such party at the address of its registered office or principal place of business. Except where specified otherwise in this Agreement, notices may not be sent by email.

14.13 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.14 VTSL agrees and declares that the SERVICES comply with the relevant general conditions imposed upon VTSL pursuant to the Communications Regulation Acts 2002-2016 as at the Effective Date.

#### 15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement is governed by and shall be construed in accordance with the laws of the Republic of Ireland.

#### 16. PRIVACY OF PERSONAL DATA & GDPR COMPLIANCE

16.1 VTSL complies with the GDPR and all UK data protection laws. Our Data Protection Officer is Nicola White, [nwhite@vtsl.net](mailto:nwhite@vtsl.net). You may contact the DPO with any questions or concerns at any time.

16.2 VTSL will not retain any of the Client's employees' personal information without your consent. By signing these Terms & Conditions, the Client gives consent for VTSL to hold the personal information you provide us with and share it with third- parties contracted by VTSL, as is required for VTSL to deliver your service.

16.3 The types of personal information we hold may include: email address, home address, mobile phone number, phone call records, call recordings (if you have subscribed to this service), website visits, website downloads, website form entry and interactions with VTSL (emails and phone calls, including call recordings of calls made to or received from VTSL). The lawful basis for holding personal information of Client employees' is Contract, Consent and Legitimate Interest.

16.4 VTSL will email the Client's main VTSL account contacts with Critical Customer Information regarding Services in the event of a service fault, and occasionally with other information pertaining to software updates, new products and VTSL news. These emails can be unsubscribed from at any time.

16.5 The Client has the right to request that we remove the personal information we hold on any of the Client's employees at any time. VTSL will remove those details from our databases within 72 hours, and ensure they are removed from third party databases if requested within the GDPR time limit.

16.6 VTSL, as a Data Processor, is responsible for the following. "Controller" refers to the Client's data controller or DPO.

- (a) ensuring the security of processing personal data;
- (b) notifying the controller of any personal data breaches;
- (c) not engaging sub-processors without the controller's consent and a written contract flowing down the same obligations;
- (d) assisting the controller in responding to requests from data subjects;
- (e) assisting with consultations with supervisory authorities;

- (f) allowing the controller to decide whether data should be deleted or returned on termination of the contract;
- (g) supporting the controller by providing evidence of compliance and audits; and
- (h) notifying the controller if any of their instructions breach the GDPR.

16.7 Should you feel we are not complying, you have the right to lodge a complaint with ComReg.