



Vapour Media Limited
(trading as Vapour Cloud)

Terms & Conditions



Vapour Media Limited Terms & Conditions

We offer a range of products and solutions, predominately delivered over our MPLS network.

When you order equipment or services from us by signing a PAC, you agree to be bound by these terms and conditions. If we accept your order, we likewise agree to be bound, and the order, including any terms set out in the PAC, these terms and the terms of any applicable Product Schedule, forms a legally binding agreement between you and us.

It's therefore important that you read the PAC, these terms and conditions and any Product Schedule carefully before you place an order, and that you keep a copy of each for future reference.

1. ABOUT THE AGREEMENT

- 1.1 Each order is a separate Agreement between Vapour and the Customer named in the PAC. The Agreement consists of the PAC and these terms and conditions. In addition, some Services have their own specific terms. Where there are product specific terms, these are set out in a Product Schedule, which will be referred to in the PAC.
- 1.2 The terms in a Product Schedule supplement these terms and, to the extent that they conflict with these terms, override these terms in respect of the Services to which they apply.
- 1.3 Given the nature of the Services, and to ensure that Vapour can operate efficiently, Vapour will not normally negotiate customer specific terms that contradict or override Vapour's standard terms. Therefore, unless it is expressly stated in a PAC that a provision is intended to override Vapour's standard terms, it will be assumed that the parties did not intend it to do so, and Vapour's standard terms shall take precedence.
- 1.4 To ensure that the terms governing the Agreement are clearly documented, the Customer agrees that it will not seek to impose any additional or alternative terms other than those set out in the PAC, terms and conditions and applicable Product Schedules, and that any terms and conditions referred to or included in purchase orders, invoices, email footers or otherwise shall have no effect between the parties.
- 1.5 Certain words in the Agreement documents are capitalised to indicate that they have a special meaning. The meaning of these terms is explained in the schedule.
- 1.6 For clarity, the following rules apply to all of the Agreement documents:
 - 1.6.1 headings are included for convenience only and shall not affect the construction or interpretation of the Agreement;
 - 1.6.2 any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender;
 - 1.6.3 any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons;
 - 1.6.4 the words **include**, **includes**, **including** and **included** and like words and expressions will be construed without limitation unless inconsistent with the context; and
 - 1.6.5 any reference to law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean the same as shall be amended, enacted, replaced, extended, modified, consolidated or repealed from time to time.

2. THE SERVICES

- 2.1 The Customer engages Vapour to supply the Services, and Vapour agrees to provide the Services, in accordance with the terms of the Agreement.
- 2.2 Vapour may use sub-contractors to provide the Services (or any part of them), but shall at all times remain responsible for the acts and omissions of those sub-contractors.

- 2.3 Any commencement or delivery dates stated in the PAC or other documentation are only estimates. The Customer should be aware that these dates are subject to change and should not act in reliance upon them.
- 2.4 The Services are provided solely for the Customer's own internal business use and may not be resold to or otherwise made available to any third party.
- 2.5 The Customer must use the Services in accordance with the Acceptable Use Policy, and must procure that anyone who it allows to have access to the Services (such as its employees) are aware of and comply with the Acceptable Use Policy.
- 2.6 The Customer is responsible for ensuring its LAN systems and applications are correctly configured to integrate with the Services. Vapour does not provide LAN integration advice or support.
- 2.7 Vapour may from time to time need to suspend or restrict some or all of the Services for the purposes of maintenance, repair or improvement. Except in the case of emergencies, Vapour will provide not less than five (5) Working Days' notice of any such suspension or restriction and shall use its reasonable endeavours to carry out the work at a time when inconvenience to the Customer will be minimised.

3. SITE SURVEY

- 3.1 The supply of the Services and any part of them shall be subject to satisfactory results of any survey, questionnaire or other investigation carried out by or on behalf of Vapour that Vapour deems necessary in respect to the Sites prior to the supply of the Services. It is the Customer's responsibility to complete the questionnaire accurately as Vapour will rely on these responses when designing and delivering its services.
- 3.2 Where a survey reveals any unusual or unanticipated costs which would be involved in the provision of the Services, Vapour shall notify the Customer of the costs and request confirmation that the Customer consents to the Charges being increased by such amount as is necessary to cover the additional costs.
- 3.3 Vapour may cancel the supply of the Services or any part of them without liability if:
 - 3.3.1 in Vapour's reasonable opinion the results of the survey are unsatisfactory or indicate that it is not technically feasible to implement the Services or any part of them; or
 - 3.3.2 the Customer does not agree to vary the Charges in accordance with clause 3.2 within 7 days of a request from Vapour to do so.
- 3.4 Where Vapour cancels the Services in accordance with clause 3.3 it shall be entitled to charge the Customer for its actual and committed costs reasonably incurred in carrying out and provisioning the surveys.

4. ATTENDANCE AT THE SITES

- 4.1 The Customer hereby grants Vapour, its employees, agents and sub-contractors the right to access any of the Sites to carry out the Services including to:
 - 4.1.1 conduct surveys and other investigations to prepare for the provision of the Services (including the ascertain the feasibility of providing the Services);
 - 4.1.2 execute any works in connection with the delivery, installation, inspection, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Equipment; and
 - 4.1.3 keep and operate the Equipment.
- 4.2 Vapour agrees to give reasonable notice prior to accessing a Site in accordance with clause 4.1, except in the case of an emergency where it may access a Site without notice but shall give notice of such access to the Customer as soon as reasonably practicable thereafter.
- 4.3 Where access to a Site (or any part of it), the undertaking of any of the Services at a Site and/or the installation or operation of Equipment at a Site requires the consent of a third party (such as a landlord) the Customer shall be responsible for procuring this consent (in writing)

and shall provide a copy of such written consent to Vapour upon request. The Customer shall procure that any applicable third party executes any such documentation as Vapour may reasonably request to enable it to lawfully perform the Services.

- 4.4 Where the required consents (as described in clause 4.3) are not obtained within 30 days of the date on which Vapour notifies the Customer that it is in a position to make the Services available, Vapour shall be entitled to terminate the Agreement on notice without liability, and in such case Vapour shall charge the Customer for all work performed, and all costs and expenses incurred and committed, up until the date of termination.
- 4.5 The Customer shall indemnify, keep indemnified and hold Vapour harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses on a solicitor / own client basis) suffered or incurred by or awarded against Vapour as a result of or in connection with any third party claim arising out of the Customer's failure or alleged failure to obtain the necessary consents in accordance with clause 4.3.
- 4.6 During any attendance at a Site by Vapour, the Customer shall provide (and procure that any other relevant party provides) such assistance as Vapour may reasonably request, including enabling access to any part of the Site, to the Equipment, and to any other relevant equipment or systems, and making available any relevant employees and representatives, and shall not do anything which may restrict Vapour's ability to access any applicable part of the Site or to perform any of the Services.
- 4.7 Without prejudice to the Customer's obligation to provide the assistance described by clause 4.6, the Customer shall provide as much advance notice as possible to Vapour of any issues it becomes aware of which may prevent or restrict Vapour's access to the Site or Equipment, or ability to perform the Services, on a day on which a Site attendance is scheduled.
- 4.8 The Customer will be responsible for any wasted costs or additional expenses incurred as a result of the Customer cancelling or rescheduling any appointment and/or Vapour, upon attending at a Site, being unable to gain full access and/or perform any scheduled Services due to a failure by the Customer to obtain the necessary consents in accordance with clause 4.3 or to provide reasonable cooperation and access in accordance with clause 4.6.
- 4.9 All Site attendances shall be carried out during Normal Working Hours, unless otherwise agreed. If Vapour does agree to attend outside Normal Working Hours, it may levy an additional charge for such attendance.
- 4.10 The Customer shall take responsibility for the health and safety of any individual attending its premises on Vapour's behalf, including ensuring that they are made aware of any relevant policies and procedures and that they are not placed in danger in any manner, and the Customer shall indemnify, keep indemnified and hold Vapour harmless from and against all costs, claims, damages, liabilities, losses and demands relating to or arising from or in connection with any claim brought against Vapour arising out of the death, personal injury or other loss suffered by an individual attending at the Customer's premises, save where this was as a result of Vapour's or that individual's negligence.
- 4.11 Prior to attendance by Vapour at a Site the Customer shall:
 - 4.11.1 provide Vapour with the site and building plans (to include full details of all internal cabling runs) of the Sites and full details of all other services in the vicinity of the proposed works; and
 - 4.11.2 prepare the Site in accordance with Vapour's instructions.
- 4.12 Vapour will use reasonable endeavours to minimise disturbance, damage and inconvenience caused during works at a Site. However, the Customer agrees to take responsibility for making the Site good after any work undertaken by Vapour at a Site, including replacing and re-siting items and re-decorating.

5. SITE MOVES AND NEW INSTALLATIONS

- 5.1 The Customer must inform Vapour as soon as reasonably practicable upon making a decision to move a Site so that suitable arrangements can be made to transfer the Services and Equipment. Any Services provided by Vapour to assist the Customer in transferring the

Services and Equipment will be additionally chargeable and shall be subject to the Customer agreeing to pay the applicable Charges at Vapour's then current rates.

- 5.2 Unless otherwise requested Vapour will endeavour to retain the Customer's existing telephone number(s) and IP addresses, but this will not always be possible, for example where the Customer is moving to a different exchange or requires parallel services.
- 5.3 The installation of new lines, either at existing Sites, at new additional Sites or at Sites that the Customer is relocating to, or the requirement to allocate new numbers as a result of an inability to move existing numbers, will require a new Agreement (and the payment of applicable connection charges) and Vapour and the Customer will enter into a further PAC accordingly.
- 5.4 If a Site move or new installation involves the visit of an engineer to facilitate it then the Customer will be responsible for Vapour's costs incurred in respect of the appointment of the engineer together with an administration fee in respect of any additional works undertaken by Vapour.
- 5.5 If the Customer moves Sites and leaves the Equipment for the new owner / tenant:
 - 5.5.1 Vapour will continue to provide the Services for a transitional period of not less than 72 hours following the time and date at which the Customer has notified Vapour that it is vacating the Site, and thereafter may suspend or terminate the Services;
 - 5.5.2 the Customer should request that the new owner / tenant contacts Vapour to enter into a direct Agreement regarding the Services and Equipment and, provided that the new owner / tenant does so Vapour may extend the transitional period for a reasonable time to allow for such Agreement to be entered into; and
 - 5.5.3 the Customer will remain responsible for the use of the Services and for the Equipment until either the new owner / tenant has entered into a new Agreement or the Services have been terminated and the Equipment retrieved by Vapour.
- 5.6 If the Customer moves to or adds a new Site where it has contractual obligations to one or more other suppliers it must ensure that it complies with its obligations to those suppliers and shall be responsible for any costs it incurs as a result of terminating any such agreement.

6. EQUIPMENT

- 6.1 The Provided Equipment shall remain the property of Vapour at all times and the Customer shall keep the Provided Equipment separate from its own equipment and other property and shall at all times ensure that it is clear to third parties that it is Vapour's property.
- 6.2 Title in the Purchased Equipment shall pass to the Customer upon receipt by Vapour of the full purchase price in cleared funds.
- 6.3 Risk in the Equipment shall pass to the Customer upon delivery of the Equipment to the relevant Site and the Customer shall at all times be responsible for ensuring the safekeeping and proper use of the Equipment at the Sites.
- 6.4 If the Customer fails to take delivery of or allow installation of any Equipment on an agreed delivery or installation date, Vapour may arrange for its storage at the Customer's risk and shall charge the Customer for the costs of such storage. The Customer will also be liable for a call out fee in relation to any redelivery and/or further attempt at installation of such Equipment at Vapour's then current rates.
- 6.5 Any Charges set out for the provision or purchase of Equipment and/or for the installation of such Equipment are based on the assumption that the Equipment can be delivered and installed on a single day in one continuous visit. Where additional visits are necessary (other than as a result of Vapour's negligence) such visits (and any additional costs incurred as a result of the need to make such visits) shall be chargeable in addition at Vapour's then current rates.
- 6.6 The Customer shall effect and maintain suitable insurance in respect of the Equipment. On request from Vapour the Customer shall provide evidence of such insurance and, if Vapour considers such insurance is insufficient the Customer shall obtain such additional insurance

cover as Vapour may reasonably request. If the Customer fails to obtain the requested insurance and this affects Provided Equipment (or Purchased Equipment in respect of which title has not yet passed) then Vapour may obtain appropriate insurance and recover the costs of this insurance from the Customer.

- 6.7 If the Provided Equipment is lost or damaged (other than as a result of Vapour's negligence or that of its employees, representatives or sub-contractors) the Customer shall be liable to Vapour for the full costs incurred by Vapour in repairing or replacing the relevant Equipment, such sum to be payable upon demand by Vapour. Vapour may where it considers appropriate replace the Equipment with similar or equivalent Equipment and with either new or used Equipment.
- 6.8 Vapour shall be entitled to modify, substitute, renew or add to the Provided Equipment from time to time provided that such modification, substitution, renewal or addition does not have a materially adverse effect on the Services.
- 6.9 The Company shall:
- 6.9.1 keep the Equipment at the Sites and not move it;
 - 6.9.2 comply with Vapour's reasonable instructions and any manufacturer's instructions in relation to the use of the Equipment;
 - 6.9.3 comply with all laws applicable to the use of the Equipment;
 - 6.9.4 not make any attachment or modification to the Equipment other than as approved by Vapour in writing;
 - 6.9.5 not do or allow anything to be done or continue to be done which is likely to damage the Equipment or detract from or impair its performance or operation;
 - 6.9.6 not repair, service, maintain or interfere with the Equipment (nor attempt to do so) except as approved by Vapour in writing;
 - 6.9.7 not sell, transfer, dispose of, let, mortgage or charge the Provided Equipment (nor attempt to do so) nor suffer or allow to be suffered any distress, seizure or execution to be levied against or of the Provided Equipment, or otherwise do anything prejudicial to Vapour's rights in the Provided Equipment;
 - 6.9.8 not remove, tamper with or obliterate any identification mark(s) affixed to the Provided Equipment showing that it is Vapour's property;
 - 6.9.9 promptly notify Vapour in writing (or orally with confirmation of such notification immediately following in writing) of any circumstances which may adversely affect the Equipment or its operation; and
 - 6.9.10 immediately notify Vapour of any loss or damage to the Equipment.
- The obligations in this clause 6.9 shall apply to the Purchased Equipment for so long as it is used in connection with the provision of the Services and shall apply to the Provided Equipment until it is collected by Vapour (whether during the term of or after the expiry of this Agreement).
- 6.10 Notwithstanding clauses 6.9.1 and 6.9.6, in the case of emergency the Customer shall take such reasonably necessary steps to safeguard the Equipment to such notify Vapour Media as soon as possible of the circumstances of the emergency and the steps taken by the Customer to safeguard the Equipment.
- 6.11 The Customer shall (at its own cost and expense) provide Vapour with:
- 6.11.1 suitable accommodation, assistance, facilities and environmental conditions for the Equipment, including a secure and constant electricity supply and the necessary power back-up supply; and
 - 6.11.2 all necessary electrical and other installations and fittings.
- 6.12 Vapour shall determine the most appropriate location for the Equipment to be installed at the Site in its reasonable discretion. Any preferences expressed by the Customer shall be taken

into account in coming to this determination but Vapour shall not be bound by the Customer's preferences where it considers that there are factors which may another location more appropriate.

- 6.13 The Customer may from time to time request that Vapour re-locates the Equipment at a Site. The Customer must provide at least 30 Working Days' notice of any such request. Provided that the Customer agrees to pay Vapour's reasonable Charges for any such re-location, Vapour shall use its reasonable endeavours to relocate the Equipment as requested.

7. ACCEPTANCE TESTS

- 7.1 Following installation of the Equipment, Vapour will carry out the appropriate acceptance tests in accordance with its standard procedures to ensure that the Services are ready for use. The Customer shall be entitled to have an authorised representative present at the acceptance tests, provided that the representative is available at the scheduled time.
- 7.2 If the Services fail the acceptance tests Vapour will either repair or replace the Equipment or the relevant part of it and repeat the acceptance tests. This process shall continue until the acceptance tests have been successfully completed.
- 7.3 On successful completion of the acceptance tests the Customer shall (if requested) sign an acceptance form confirming satisfactory installation of the Equipment and its acceptance of the Services. If the Customer fails to sign such form within 7 days of successful completion of the acceptance tests the Customer shall be deemed to have confirmed its acceptance of the Services, with the date of such acceptance deemed to be the date on which the acceptance tests were successfully completed.

8. CUSTOMER APPARATUS

- 8.1 The Customer shall provide such information about the Customer Apparatus as Vapour may reasonably request.
- 8.2 The Customer shall read any instructions provided by Vapour and the manufacturers' operations and maintenance manuals for the Customer Apparatus and the Equipment and, having regard to any relevant instructions and requirements:
- 8.2.1 ensure it has all Customer Apparatus necessary to make full use of the Equipment and the Services and that the Customer Apparatus it does have meets all compatibility requirements and is, where appropriate, updated with the latest firmware;
 - 8.2.2 program, equip and connect the Customer Apparatus in such a manner as is required to allow it to interface with the Equipment and Services; and
 - 8.2.3 make any such modifications to the Customer Apparatus as may be necessary or advisable.
- 8.3 The Customer shall remain fully responsible for the Customer Apparatus, including ensuring that it complies with all applicable laws and standards as may be in effect from time to time. The Customer shall immediately disconnect any Customer Apparatus which ceases to be compliant with current laws or standards or to meet the requirements set out in clause 8.2.
- 8.4 Vapour may disconnect or instruct the Customer to disconnect any Customer Apparatus if in Vapour's reasonable opinion:
- 8.4.1 the Customer is in breach of any provision of clauses 8.1 to 8.3; or
 - 8.4.2 the Customer Apparatus (or the interaction of the Customer Apparatus with the Equipment or Services) may:
 - (a) cause the death of, or personal injury to, any person;
 - (b) cause damage to the Equipment or any other property; or
 - (c) impair the quality of the Services or of any other services provided to any customer by Vapour.

Where Vapour requests that the Customer disconnects Customer Apparatus pursuant to this clause 8.4 and the Customer fails to do so then Vapour may suspend the Services (or any part of them). Any such suspension shall be lifted once the Customer disconnects the Customer Apparatus as requested.

- 8.5 The Customer agrees that Vapour shall not be responsible for:
- 8.5.1 any loss or damage arising from the use of the Customer Apparatus;
 - 8.5.2 the repair or maintenance of the Customer Apparatus; or
 - 8.5.3 any delay or inability to provide the Services as a result of the Customer Apparatus not being compatible with the Equipment or Services.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Nothing in this agreement shall operate to transfer any Intellectual Property Rights from either party to the other.

9.2 Where Vapour provides the Customer with any software, Vapour grants the Customer a non-exclusive, non-transferrable licence to use the software strictly for the purpose of receiving the Services and using the Equipment.

9.3 Vapour may provide software which is licensed to it by a third party licensor. In such case the Customer must comply with any licensing terms imposed or required by the licensor (if applicable) which will either be set out in a Product Schedule or in a separate document provided to the Customer.

9.4 The Customer shall indemnify, keep indemnified and hold Vapour harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses on a solicitor / own client basis) suffered or incurred by or awarded against Vapour as a result of or in connection with any claim by a third party licensor arising out of the Customer's alleged misuse of its software (including any failure to comply with these terms or any applicable terms as described in clause 9.3).

9.5 The Customer shall not:

- 9.5.1 reproduce the software except for archival or back up purposes (and, in those circumstances, shall ensure that each copy contains all of the original software's proprietary notices); or
- 9.5.2 adapt, maintain, modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on any of the software or any documentation accompanying the software (save to the extent that such acts cannot be prohibited by law).

9.6 Vapour shall indemnify, keep indemnified and hold the Customer harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses on a solicitor / own client basis) suffered or incurred by or awarded against the Customer as a result of or in connection with any claim that receipt of the Services infringes the Intellectual Property Rights or other rights of any third party, save where that infringement arises out of the Customer's negligence or breach of the Agreement.

9.7 To obtain the benefit of the indemnity granted by clause 9.6 the Customer must:

- 9.7.1 promptly notify Vapour upon becoming aware of a claim or potential claim;
- 9.7.2 give Vapour full conduct of the defence of the claim, including the right to settle or compromise the claim as it sees fit; and
- 9.7.3 provide (at Vapour's cost) such reasonable assistance in the defence of the claim as Vapour may reasonably request.

9.8 Vapour may take such steps as it considers reasonable to remedy any infringement or alleged infringement of a third party's Intellectual Property Rights, including making reasonable alterations to the Services (provided that they do not materially diminish the performance or function of the Services). If in Vapour's reasonable opinion it is not reasonably practicable or

economically viable to take the necessary steps to make the Services non-infringing then it may terminate the Agreement on 30 days' written notice.

- 9.9 The Customer shall indemnify, keep indemnified and hold Vapour harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses on a solicitor / own client basis) suffered or incurred by or awarded against Vapour as a result of or in connection with any claim relating to the alleged infringement of the Intellectual Property Rights or other rights of any third party arising from:
- 9.9.1 work carried out by Vapour, its employees or sub-contractors in accordance with directions or specifications given by the Customer;
 - 9.9.2 the connection and/or use of any Customer Apparatus in conjunction with the Services; or
 - 9.9.3 any materials transmitted via the Services.

10. CHARGES AND PAYMENT

- 10.1 The Charges shall be payable in accordance with applicable payment terms, as set out in this clause 10 and the PAC.
- 10.2 All Charges must be paid by direct debit by no later than the due date shown on the invoice (which shall be 30 days from the date of the invoice unless an alternative payment period has been agreed).
- 10.3 Save in respect of Charges specifically calculated by reference to usage, the Charges shall be payable irrespective of whether the Services are used or not.
- 10.4 Where Charges are calculated by reference to usage, usage shall be determined by Vapour (or the applicable supplier or sub-contractor) using its standard recording and logging methods. Any determination as to usage Charges by Vapour shall be final and binding (absent fraud or manifest error).
- 10.5 Where Services are provided for which no price has been quoted in the PAC or otherwise agreed then the Charges shall be in accordance with Vapour's then current price list or day rates (as applicable).
- 10.6 Where these terms and conditions, a Product Schedule or a PAC specify a date or point at which an invoice may be issued, Vapour reserves the right to issue the invoice at an earlier or later date to coincidence with its billing cycles. As a result, the first and last invoice relating to any Services may include Charges due for more or less than a complete billing cycle, depending on when the Services start or end.
- 10.7 All Charges are expressed exclusive of VAT (unless otherwise stated), which is payable in addition where applicable.
- 10.8 The Charges shall be paid in full by the Customer without any deduction or set-off.
- 10.9 Where the Customer fails to pay any Charges by the due date Vapour may in its discretion:
- 10.9.1 exercise its rights under the Late Payment of Commercial Debts (Interest) Act 1998;
 - 10.9.2 require the Customer to pay future Charges in advance in accordance with such payment plan as Vapour deems appropriate;
 - 10.9.3 impose credit limits on the Customer and suspend the Services at any time where such limits are reached until payment in full of such outstanding Charges have been paid;
 - 10.9.4 suspend the provision of the Services or any part of them until payment is made in full; and/or
 - 10.9.5 terminate the Agreement.
- 10.10 Any agreed Charges shall be fixed and shall not be changed by Vapour other than:

- 10.10.1 to reflect any increases in the costs of providing the Services to the Customer due to increases in third party network provider costs, utility costs, other supplier or sub-contractor charges or other costs necessarily incurred in the provision of the Services, to the extent necessary to cover such increase;
- 10.10.2 to reflect any additional costs created by changes to laws, regulation or guidance which Vapour is required to comply with in connection with providing the Services, including to reflect any additional third party costs or internal costs such as additional management time, transition costs or changes in the way that the Service must be provided, to the extent reasonably attributed by Vapour to such change; and
- 10.10.3 without prejudice to clauses 10.10.1 and 10.10.2, not more than once in any calendar year Vapour may increase the Charges by no more than the amount necessary to reflect the increase in the UK Retail Prices Index between the most recently published figure at the date of such notice and the figure published 12 months before such date.

Vapour shall provide not less than 30 days' written notice of any increase made in accordance with this clause 10.10, and no increase made in accordance with clause 10.10.3 shall take effect earlier than 12 months from the date of the previous increase, if any.

11. TERM AND TERMINATION

- 11.1 The Agreement shall commence on the date that an order is accepted by Vapour, as evidenced by it signing a copy of the PAC or otherwise providing written confirmation of acceptance to the Customer, and shall continue until terminated in accordance with its terms.
- 11.2 Vapour may terminate the Agreement (or any discrete Services provided under it) at any time on not less than 30 days' written notice. For the avoidance of doubt, where this termination takes place during the Minimum Period the Customer will be relieved of its obligation to make any further payment for the terminated Services after termination and will not be liable for any payments in respect of the unexpired part of the Minimum Period.
- 11.3 The notice period that must be given by the Customer depends on the nature of the Services that are being terminated, and the applicable period will be set out in the applicable PAC or Product Schedule. Where no notice period is specified in respect of a particular type of Services then the Customer may terminate such Services on not less than 90 days' notice, provided that such notice does not seek to bring the Agreement to an end prior to the expiry of the Minimum Period.
- 11.4 Subject to clause 11.9, the Customer may terminate the Agreement (or any discrete Services) prior to the expiry of the Minimum Period (or applicable notice period), for example where it is moving to a different Site and does not wish to or cannot move the Services to the new Site.
- 11.5 Either party may also terminate the Agreement (including during any Minimum Period) immediately by written notice to the other if the other:
 - 11.5.1 commits an irremediable material breach of the Agreement, persistently commits remediable material breaches or commits any remediable material breach and fails to remedy it within 14 days of receipt of notice of the breach requiring remedy of the same; or
 - 11.5.2 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere.
- 11.6 Vapour may also terminate this Agreement immediately on written notice to the Customer if:
 - 11.6.1 it is entitled to terminate any other agreement between itself and the Customer for the Customer's breach of that Agreement;

- 11.6.2 it has reason to suspect fraud or deception (including fraudulent generation of traffic from any source to any Services) has occurred or is likely to occur in future in connection with the Services;
 - 11.6.3 the Customer ceases or threatens to cease to carry on business;
 - 11.6.4 in respect of any Site, if it becomes aware that the Customer has abandoned or otherwise ceased to trade from that Site save where the Services have been moved to the Customer's new Site and save that, where clause 5.5 applies Vapour will not exercise this right until the end of the transitional period provided for by that clause;
 - 11.6.5 Vapour's agreement with a supplier or sub-contractor involved in the provision of the Services terminates and it cannot find a suitable alternative provider (but in such case, where Vapour is given advance notice of such termination by the supplier or sub-contractor it will promptly notify the Customer accordingly and termination will take effect only on termination of its contract with the supplier or sub-contractor); or
 - 11.6.6 Vapour is directed by Ofcom or other competent authority to cease to facilitate or allow the provision of the Services, or is given a direction by any such authority which would make it impossible or materially more difficult to continue providing the Services.
- 11.7 Without prejudice to its rights to terminate the Agreement in the circumstances described above, Vapour may suspend the Services or any part of them if it has reasonable grounds to believe that the Customer has breached or is likely to breach any term of the Agreement. Such suspension shall remain in force until Vapour is satisfied that the issue giving rise to the suspension has been rectified and the cause of the issue addressed so that it will not re-occur. The Customer shall remain liable for the Charges during the period of any suspension.
- 11.8 A suspension imposed pursuant to clause 11.7 may continue until it is lifted pursuant to the terms of that clause, but without prejudice to this, if the suspension continues for 14 days or more Vapour may terminate the Agreement.
- 11.9 Where the Customer terminates the Agreement (or part of it) pursuant to clause 11.4, or where Vapour terminates pursuant to clause 10.9.5, 11.5, 11.6.1 to 11.6.4 or 11.8, or otherwise for the Customer's breach, the Customer shall be liable for:
- 11.9.1 the Charges that would otherwise have been payable during the unexpired part of the Minimum Term or notice period that it would have otherwise had to give, as if it had continued receiving the Services during that period, including any line rental, Equipment rental charges, minimum spends, annual support, contracted bundles and subscriptions;
 - 11.9.2 any costs, damages or charges that Vapour incurs as a result of such termination; and
 - 11.9.3 an administration charge, at Vapour's then current rates, to cover Vapour's management and administrative expenses incurred as a result of the termination.
- 11.10 In the event of termination of this Agreement for any reason:
- 11.10.1 any Charges due up until the date of termination, or payable pursuant to clause 11.9, shall fall immediately due and payable;
 - 11.10.2 the Customer shall return or destroy (at Vapour's option) and permanently erase from its systems any software and associated documentation provided by Vapour;
 - 11.10.3 any provisions which are expressed to survive termination or which are clearly intended to do so shall survive such termination (including clause 3 (to the extent necessary to collect any Equipment), clause 6 (as described in clause 11.11), clause 9, clauses 11.9 to 11.12, clauses 12 to 14 and clauses 19 to 22); and

- 11.10.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 11.11 Following termination, the Customer shall continue to hold any Provided Equipment and keep it safe pursuant to clause 6 until Vapour can collect it. Vapour shall make arrangements to collect the Provided Equipment as soon as reasonably practicable following termination and the Customer shall provide such access and reasonable assistance as Vapour may require. If the Customer fails to allow and make arrangements for Vapour to collect the Provided Equipment within a reasonable time following termination Vapour may at its option:
- 11.11.1 access the Sites to retrieve the Provided Equipment, including (without liability) by forced entry where necessary, and remove the Provided Equipment from the Sites, and the Customer shall be liable for any costs, expenses or claims incurred by Vapour in carrying out such retrieval; or
- 11.11.2 charge the Customer the full market value for the Provided Equipment (being the higher of (a) the amount that it reasonably determines it would charge the Customer had the Customer contracted to purchase the Provided Equipment on ordinary arms-length terms and (b) the replacement value of the Provided Equipment, upon payment of which title in the Provided Equipment shall transfer to the Customer (such amount to be payable immediately upon notification to the Customer of the amount).
- 11.12 If at the point of termination there is any outstanding amount due for Purchased Equipment then Vapour may (but is not required to) cancel the sale and collect the Purchased Equipment (including, where the Customer fails to cooperate with such collection, by accessing the Sites by force (without liability) to remove the Purchased Equipment). The Customer shall be liable for any costs, expenses or claims incurred by Vapour as a result of such cancellation, but Vapour shall credit against any such charge any payments that had already been made towards the price of the applicable Purchased Equipment.

12. LIABILITY

- 12.1 Save as provided by clause 12.3 below:
- 12.1.1 Vapour's liability arising out of or in connection with the Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall not exceed:
- (a) in the case of claims arising out of or in connection with the Equipment, 110% of the Charges paid for the Equipment (including any connected installation Services), save that where the claim relates to damage to or failure of the Equipment Vapour may at its option repair or replace the affected Equipment, and in this case such repair or replacement shall be the Customer's sole remedy; and
- (b) in respect of any other claim, Vapour's total aggregate liability for all such claims arising in any contract year (the first such year commencing on the date of the Agreement and each subsequent year commencing on the anniversary of that date) shall not exceed 110% of the Charges paid or payable in respect of the affected Services (or, where the claim relates to the Agreement as a whole, 110% of the Charges paid or payable under the Agreement) during the preceding contract year. In respect of the first contract year the limitation shall be calculated based on the Charges paid or payable during that contract year. Any claims arising after termination in the final contract year.
- 12.1.2 Vapour shall not be liable for any claim to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, injury to reputation, wasted management time or indirect, consequential or special loss or damage regardless of the form of action, whether in contract, tort (including, but not limited to, negligence) or strict liability or otherwise howsoever arising and regardless of

- whether Vapour knew or had reason to know of the possibility of the loss or damage in question;
- 12.1.3 the Customer agrees to bring any claim it may have against Vapour no later than two years after the date on which the cause of action first arose; and
- 12.1.4 Vapour shall not be liable for any delay in or failure to comply with its obligations to the extent that such failure results from the actions or omissions of the Customer.
- 12.2 The express terms of the Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 12.3 Nothing in this agreement shall limit or exclude either party's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, and/or for any other loss or damage the exclusion or limitation of which is prohibited by English law.
- 12.4 The Customer shall indemnify, keep indemnified and hold Vapour harmless from and against all costs, claims, damages, liabilities, losses and demands relating to or arising from or in connection with any breach by the Customer of this Agreement or the Customer's negligent act or omission.
- 13. CONFIDENTIALITY**
- 13.1 Each party undertakes that it shall not at any time disclose to any third party any confidential information (being any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with the Agreement), nor use such information for any purpose other than to exercise its rights and perform its obligations under the Agreement, except as otherwise permitted by the Agreement or with the prior written consent of the other party.
- 13.2 The provisions of this clause 13 shall not apply to any confidential information that the receiving party can demonstrate:
- 13.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of the Agreement or any other obligations of confidentiality;
- 13.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect to it;
- 13.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
- 13.2.4 was developed independently of and without reference to confidential information disclosed by the other party,
- provided always that, except where it is prohibited from doing so by law or court order, a party wishing to rely on an exception contained in this clause 13.2 shall provide the other with at least ten (10) days' written notice of its intention to do so, such notice specifying details of the exception to be relied upon and the information concerned.
- 13.3 Each party shall be entitled to divulge the other party's confidential information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this agreement, provided that the receiving party shall ensure that such persons are aware of, and shall procure that such persons comply with, these obligations as to confidentiality.
- 13.4 Where the Customer is a public authority which is subject to the Freedom of Information Act 2000 (the **FOIA**):
- 13.4.1 the Customer shall promptly inform Vapour if it receives a request under the FOIA (a **Request**) which may lead to it disclosing Vapour's confidential information (unless prohibited to do so by law);

- 13.4.2 where and to the extent that Vapour requests that it does so, the Customer shall use all reasonable endeavours to avoid disclosing Vapour's commercially sensitive information, including relying on any exceptions provided for by the FOIA, it being acknowledged that the provisions of this clause 13.4.2 do not override the Customer's duties under the FOIA;
- 13.4.3 subject to clauses 13.4.1 and 13.4.2, the Customer may make any disclosures it is required to make by the FOIA notwithstanding the other provisions of this clause 13; and
- 13.4.4 Vapour shall (at the Customer's expense) provide all such assistance in complying with the Request as the Customer may reasonably request.

14. DATA PROTECTION

- 14.1 Each party agrees that, in the performance of its respective obligations under the Agreement, it shall comply with the provisions of the Data Protection Act 1998 and any successor or replacement legislation (in this clause 14, referred to as the Act) to the extent it applies to each of them. Where used in this clause 14, the expressions process, personal data, data controller, data processor and data subject shall bear their respective meanings given in the Act.
- 14.2 The Customer is the data controller and Vapour is acting as a data processor and Vapour shall:
 - 14.2.1 process the personal data strictly in accordance with the terms of the agreement and the Customer's instructions from time to time unless otherwise required by law or any regulatory body (in which case Vapour shall, where permitted, inform Vapour of that legal requirement before processing); and
 - 14.2.2 take such security measures as required to enable the personal data to be processed in compliance with obligations equivalent to those imposed on the Customer by the seventh principle of the Act.
- 14.3 As a result of the nature of some of the Services offered by Vapour, it may be necessary to export personal data outside the European Economic Area. Notwithstanding any such export, Vapour will continue to be bound by clause 14.2 in respect of such data. The Customer hereby authorises Vapour to make such exports and warrants that it has the necessary rights to grant such authority.

15. ANTI-BRIBERY

- 15.1 Each party shall comply with all applicable laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**) and shall have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate.
- 15.2 Each party shall:
 - 15.2.1 promptly report to the other any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this agreement; and
 - 15.2.2 from time to time upon the other's request certify to the other in writing signed by an officer of the company, compliance with this clause 15 by it and all persons associated with it under clause 15.3, together with such supporting evidence of compliance as the other may reasonably request.
- 15.3 Each party shall ensure that any person associated with it who is performing services in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the parties in this clause 15 (**Relevant Terms**). Each party shall be responsible for the observance and performance of the Relevant Terms by any such persons it appoints, and shall be directly liable to the other for any breach by such persons of any of the Relevant Terms.
- 15.4 Breach of this clause 15 shall be deemed an irremediable material breach under clause 11.5.1.

15.5 For the purpose of this clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 15 a person associated with Vapour includes but is not limited to any subcontractor of Vapour.

16. TUPE

16.1 The parties do not expect the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) to apply upon the commencement of the Services.

16.2 Notwithstanding clause 16.1, the Customer agrees that if TUPE applies (or is alleged to apply) to transfer the employment of any individual (a **Transferring Employee**) to Vapour from the Customer or any previous provider(s) of any of the Services on the commencement of any of the Services or the Agreement, then within 14 days of the commencement of the relevant Service or Services (or of the date on which it becomes aware of the transfer or alleged transfer, if later), Vapour may, by written notice to the Customer, elect either to continue or to terminate the employment of the Transferring Employee and Customer shall indemnify Vapour against:

16.2.1 in either case, any employment related claims and costs of remuneration in respect of any Transferring Employee where such claims or costs relate to any period prior to the date of transfer; and

16.2.2 where Vapour elects to terminate the employment of the Transferring Employee, any costs and liabilities arising out of or in connection with (a) the employment of such employee between the date of transfer and the date of termination (provided that termination took place no later than the last date for serving a notice in accordance with clause 16.2) and (b) the termination, including any statutory and contractual redundancy claims and any other proceedings, claims, actions, awards, damages, losses, liabilities, demands, expenses, judgments, penalties, fines and charges and any other losses but excluding in either case any proceedings, claims, actions, awards, damages, losses, liabilities, demands, expenses, judgments, penalties, fines and charges arising in respect of a finding or allegation that Vapour discriminated against the individual.

17. SECURITY

17.1 The Customer must keep any usernames, passwords, smart cards, security devices and other security codes and equipment allocated in respect of the Services safe, secure and confidential and must immediately notify Vapour if it has any reason to believe that any its security codes and equipment have been compromised in any manner. The Customer must not copy or attempt to copy any smart cards or security devices.

17.2 Vapour may in its sole discretion change any password, request that the Customer changes any password, or suspend any access where it has reason to believe that the Customer is in breach of clause 17.1 or that security has otherwise been (or may be) compromised.

17.3 Vapour may (but is not required to) comply with a request by Vapour to change or reset a password. Vapour may impose a charge at its then current rates in respect of such change.

17.4 Vapour is under no obligation to provide Services where the Customer is unable to provide a valid password.

17.5 The Customer acknowledges that, whilst Vapour endeavours to keep the Services secure, no guarantee can be given that the Services are entirely secure and Vapour does not warrant that it will be able to detect or prevent all authorised attempts to access the Services. Vapour shall use its reasonable endeavours to assist the Customer with any investigation into fraudulent acts but cannot be liable for such acts save where they arise from the fraud and/or authorised use by an employee of Vapour acting in that capacity.

17.6 The Customer acknowledges that Vapour has no control over the Customer's own systems, LAN, software, PABX, switch configuration, voice mail security or other feature services enabled.

18. **FORCE MAJEURE**

- 18.1 Vapour shall not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under the Agreement that is caused by events outside its reasonable control (a **Force Majeure Event**).
- 18.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond Vapour's reasonable control which would make it impossible, impractical or materially more onerous or expensive for Vapour to perform the affected obligations and includes in particular (without limitation) the following:
- 18.2.1 civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - 18.2.2 fire, explosion, malicious damage, collapse of building, subsidence, nuclear, chemical or biological contamination, epidemic or pandemic;
 - 18.2.3 storm (including lightning strike), flood, drought, hurricane, earthquake or other natural disaster or adverse weather conditions;
 - 18.2.4 strikes, lock-outs, other industrial action or other shortage of available staff;
 - 18.2.5 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, inability to obtain Equipment, impossibility of the use of public or private telecommunications networks, or interruption or failure of utility service;
 - 18.2.6 malicious activity against Vapour's systems such as unauthorised access, computer virus or denial of service attack, other illegal or unlawful actions of third parties, or non-performance by suppliers, subcontractors or agents; and
 - 18.2.7 the acts, decrees, legislation, regulations, policy or restrictions of any government or public authority.
- 18.3 A Force Majeure Event may be one which specifically prevents Vapour from providing the Services to the Customer, or may be one which reduces Vapour's ability to provide services as a whole across its customer base or results in an unexpected increase in demand on Vapour's network such that it is unable to meet the demand in full. In the case where Vapour is able to provide the Services to some but not all customers it shall be a matter for Vapour's discretion as to which customers it provides the Services to during the continuance of the Force Majeure Event. The Customer acknowledges that Vapour will give preference to hospitals, other emergency organisations and other similar essential services where required and this may affect Vapour's ability to provide the Services to the Customer.
- 18.4 Vapour's performance under this Agreement is deemed to be suspended for the period that the Force Majeure Event continues, and Vapour may suspend some or all of the Services (without liability) during the continuance of such event. Vapour shall use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under the Agreement may be performed despite the Force Majeure Event.
- 18.5 If the Services are suspended for a continuous period of more than 14 days due to a Force Majeure Event Vapour may at its option terminate the Agreement (or the affected Services) on written notice to the Customer.

19. **NON-SOLICITATION**

- 19.1 Except with Vapour's prior written consent, during the term of the Agreement and for a period of twelve (12) months thereafter the Customer will not directly or indirectly employ or engage or make an offer of employment or engagement to any person employed or engaged by Vapour (or employed by a supplier or sub-contractor and involved in the provision of the Services).
- 19.2 If a party breaches clause 19.1 it shall pay to Vapour:
- 19.2.1 the greater of (a) the relevant individual's gross annual salary inclusive of all benefits at the time of their resignation or departure and (b) the relevant individual's new gross annual salary or fee inclusive of all benefits; and

19.2.2 any recruitment costs incurred by Vapour (or the relevant supplier or sub-contractor) in replacing such individual.

such sums being deemed by both parties to be fair compensation for the loss suffered as a result of breach.

20. CHANGES

20.1 Vapour may from time to time make changes to the Services and/or the terms of the Agreement on written notice to the Customer where:

20.1.1 Vapour reasonably considers that the change is necessary or desirable as a result of a change in applicable law, regulation or guidance; or

20.1.2 the change is intended to improve the functionality or usability of the Services, add new features, remove obsolete features or fix errors or defects.

Vapour shall give not less than 30 days' notice of any change made in accordance with this clause 20.1, except where it is required to make the change on shorter notice as a result of changes in law, regulation or guidance, when it shall give as much notice as reasonably practicable.

20.2 If Vapour wishes to make any other changes to the Services and/or terms of the Agreement (not falling within the scope of clause 20.1) it shall provide the Customer with not less than 30 days' written notice of the proposed change. In such case the Customer shall be entitled to reject the change on written notice, provided that such written notice is served within 14 days of receipt of notice of the change. If the Customer rejects the change then, unless Vapour withdraws its notice, the Agreement shall terminate with effect from the date on which the change was due to be implemented. In any other case the Services and the Agreement shall continue in full force and effect (save as varied by Vapour's notice).

21. NOTICES

21.1 Each notice given under or in relation to the Agreement must be in writing and either delivered by hand or sent by first class post to the recipient's nominated address.

21.2 Notices sent to Vapour shall be sent to its registered office marked for the attention of Jason Sharp.

21.3 The Customer's nominated contact details shall be as set out in the PAC.

21.4 Each party may update its nominated contact details by notice to the other from time to time.

21.5 A notice shall be deemed to have been received:

21.5.1 in the case of a delivery made in person, when delivered; and

21.5.2 in the case of first class post, two Working Days after posting.

21.6 This clause 20 does not apply to the service of legal proceedings or other documents in any legal action.

22. GENERAL

22.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges and accepts that, in entering into the Agreement, it has not relied upon any representation, undertaking or promise except as set out in the Agreement.

22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

22.3 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Agreement does not constitute and shall not be construed as a waiver of such term or right, remedy, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall

any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

- 22.4 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to the Agreement shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 22.5 The Customer shall not assign, transfer, sub-contract or otherwise part with the Agreement or any right or obligation under it without Vapour's prior written consent. Any purported assignment or transfer other than with Vapour's permission shall be void.
- 22.6 If Vapour wishes to assign, transfer or novate any of its rights or obligations to a third party the Customer will execute any documentation that Vapour may request to give effect to such assignment, transfer or novation. For the avoidance of doubt nothing in this clause 22.6 shall impose an obligation on Vapour to obtain such written approval from the Customer.
- 22.7 The PAC may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement. No counterpart shall be effective until each party has executed at least one counterpart.
- 22.8 The Customer grants Vapour the non-exclusive right to use its name and/or logo in publicity material. To enable prospective customers to gain a better understanding of the services it offers, Vapour may feature case studies on its website or in other publicity material and the Customer consents to the details of the Services provided to it being featured in such a case study and shall give such reasonable cooperation as Vapour may request in respect of such case study.
- 22.9 Vapour reserves the right to submit the Customer's details and payment record to credit reference agencies.
- 22.10 To improve the quality of its customer services and assist with complaint handling, Vapour may monitor or record calls made to or by Vapour. The Customer consents to such recording and agrees that it shall ensure that its employees and other personnel are aware such calls may be recorded.
- 22.11 Nothing in this agreement shall confer any rights upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999, or otherwise.
- 22.12 The Agreement (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with the Agreement.

Schedule Defined Terms

Acceptable Use Policy	Vapour's acceptable use policy as in effect from time to time, the current version of which is set out in the appendix
Agreement	the agreement between Vapour and the Customer, consisting of these terms, the PAC and any applicable Product Schedule
Charges	any charges that are payable by the Customer for the Equipment or the Services
Customer	the customer whose details are included in the PAC
Customer Apparatus	any equipment or other apparatus used by the Customer in connection with the receipt of the Services or in conjunction with the Equipment, but not including the Equipment itself
Equipment	the Provided Equipment and the Purchased Equipment
Intellectual Property Rights	any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights and any and all goodwill relating or attached to it and all extensions and renewals of it
Provided Equipment	any equipment which is provided (but not sold) to the Customer by Vapour pursuant to the Agreement, as described in the applicable PAC
Minimum Period	the minimum period set out in the PAC (if any)
Normal Working Hours	9am to 5pm GMT / BST on a Working Day
PAC	the proposal and contract document agreed between Vapour and the Customer, either in Vapour's standard format or such other format as Vapour and the Customer agree to use
Product Schedule	a schedule of additional and/or alternative terms relevant to specific Services that the Customer may contract for
Purchased Equipment	any equipment which is purchased by the Customer from Vapour pursuant to the Agreement, as described in the applicable PAC
Services	any service that Vapour may provide to the Customer pursuant to the Agreement, being such services as are described in the applicable PAC and any other services that Vapour may from time to time provide to the Customer pursuant to the Agreement
Site	a site to which Vapour provides Services
Vapour	Vapour Media Limited, a company incorporated and registered in England and Wales with company number 8443224 and whose registered office is at The Gateway, Lowfields Close, Lowfields Business Park, Elland, HX5 9DX
Working Day	any day other than a Saturday, Sunday or public holiday in England

Appendix Acceptable Use Policy

1. This Acceptable Use Policy has been designed to protect Vapour's services and systems and to ensure that such services and systems remains functional, accessible and secure for all customers and their users.
2. It is a requirement of this Acceptable Use Policy that it is strictly complied with, both in letter and in spirit. In the event that you are unsure as to whether any particular use of Vapour's services is permitted, please contact us seeking clarification (for the purposes of this Acceptable Use Policy, a reference to "we" or "us" is a reference to Vapour Media Limited, The Gateway, Lowfields Close, Lowfields Business Park, Elland, HX5 9DX).
3. This Acceptable Use Policy applies to all users of Vapour's services. A reference in this Acceptable Use Policy to "you" is to any user.
4. You must:
 - 4.1 use our services and access our systems in accordance with this Acceptable Use Policy;
 - 4.2 use our services and access our systems in good faith and in the manner in which is intended;
 - 4.3 read the documentation and ensure that you use our services and systems in accordance with it; and
 - 4.4 let us know if you become aware of anything which concerns you regarding our services or systems, including any security issues or any breach or potential breach of the terms or this Acceptable Use Policy by you or any other party.
5. You must not use our services or access our systems in a manner that:
 - 5.1 breaches any applicable local, national or international law or regulation;
 - 5.2 may damage our reputation, that of our services, or the reputation of any customer or user; and/or
 - 5.3 is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect.
6. You may not use our services or access our systems for the following purposes:
 - 6.1 uploading, downloading, using or re-using any material which:
 - 6.1.1 contains any material which is defamatory or derogatory of any person;
 - 6.1.2 contains any material which is obscene, offensive, hateful or inflammatory;
 - 6.1.3 promotes sexually explicit material, violence, any illegal activity or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
 - 6.1.4 infringes the intellectual property rights or other rights of any person;
 - 6.1.5 is likely to deceive any person;
 - 6.1.6 is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence; and/or
 - 6.1.7 advocates, promotes or assists any unlawful act such as (by way of example only) copyright infringement or computer misuse; and
 - 6.2 harming or attempting to harm any individual, company or other body in any way;
 - 6.3 causing annoyance or inconvenience; and
 - 6.4 accessing any computer, system, data or network in an unauthorised manner.

7. You must not:
- 7.1 use automated scripts to collect information from or otherwise interact with our services or systems (save for those expressly authorised by us in writing);
 - 7.2 reproduce, duplicate, copy or re-sell any part of our services except as permitted by us;
 - 7.3 impersonate any person or misrepresent your identity or affiliation with any person;
 - 7.4 access without authority, interfere with, damage or disrupt:
 - 7.4.1 any part of our services or system;
 - 7.4.2 any equipment or network over which the services are provided or which form part of our systems;
 - 7.4.3 any software used in the provision of the services; or
 - 7.4.4 any equipment or network or software owned or used by any third party;
 - 7.5 attempt to circumvent any security measure or other restriction; and
 - 7.6 transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware, or to attack our services or systems via a denial-of-service attack or a distributed denial-of service attack.



Product Schedule
Vapour Access



Vapour Media Limited **Vapour Access**

Vapour offers a range of solutions, delivered over our secure UK based MPLS network.

The receipt of our services is subject to your agreement to our terms and conditions. Our general terms and conditions are set out in a separate document (we will be happy to provide a copy on request).

Some of our services have specific terms that are only relevant to that particular service. To keep our terms easy to read, and to avoid providing you with terms that are not relevant to you, we set those terms out in separate product schedules, such as this one. This product schedule contains the additional and alternative terms that are applicable to our Vapour Access connectivity services.

It's therefore important that you read this product schedule in conjunction with the order form, the terms and conditions and any other applicable product schedules carefully before you place an order, and that you keep a copy of each for future reference.

1. ABOUT THIS PRODUCT SCHEDULE

- 1.1 The terms set out in this Product Schedule are applicable to customers receiving the Vapour Access Services. This will be indicated in the Order Form.
- 1.2 These terms supplement Vapour's general terms and conditions and, to the extent that they conflict with those terms, override these terms in respect of the Vapour Access Services. For the avoidance of doubt, save to the extent that these terms conflict with the general terms and conditions, the general terms and conditions apply to the Vapour Access Services.
- 1.3 Certain words in the Agreement documents are capitalised to indicate that they have a special meaning. The meaning of terms which are used throughout the Agreement documents is explained in the schedule to Vapour's general terms and conditions. The meaning of terms which are only used in this Product Schedule is explained in the schedule to this Product Schedule.

2. THE VAPOUR ACCESS SERVICES

- 2.1 Vapour will aim to provide the services as described within the PAC recognising these have been accepted based on information supplied by the Customer or collected during a site survey, and may be subject to amendment. Vapour may conduct surveys to clarify whether the Vapour Access Services, Equipment, Connection Date or Charges require amending and will notify the Customer in writing if any amendments are required.
- 2.2 Vapour shall comply with its obligations as set out in the Customer Support Plan and the Service Level Agreement. If Vapour fails to meet the service levels the Customer shall be entitled to the applicable remedies set out in the Customer Support Plan and Service Level Agreement (if any). Such remedies shall be the Customer's sole and exclusive remedy for Vapour's failure to meet the service levels or other unavailability of or faults affecting the Vapour Access Services.
- 2.3 Vapour will provide an estimated implementation date on a Site per Site basis which is based on the estimated lead times from its third party providers. Vapour will notify the Customer to confirm changes to these dates. The Customer acknowledges that all timeframes are estimates only. Vapour has no liability for any failure to meet any of the dates provided or for any failure to meet any service levels or to repair a fault within any given timeframe.
- 2.4 Where the agreed PAC includes a "managed service", Vapour will install and maintain the router. Where the PAC includes a "wires only service", it is the Customer's responsibility to install a router at the Site or Sites where this is required and neither Vapour nor its designated subcontractor shall bear any liability for failure to meet any Connection Date due to delay in the installation of such router.
- 2.5 Where the Vapour Access Services are provided as a "wires only service" or it has otherwise been agreed that the Customer shall utilise its own router attached to the Vapour Access Services then all responsibility and liability for such equipment shall remain with the Customer.

Should Vapour or its subcontractor investigate or visit a Site due to a fault which is later found to be caused by equipment not provided by Vapour then Vapour will charge the Customer for the investigation, any site visit and any additional costs incurred as a direct result.

- 2.6 Where the agreed PAC includes the provision of a hosted firewall, Vapour will use all reasonable endeavours to provide as secure a protection as possible but the Customer acknowledge that no firewall is completely secure or proof against all external threats such as viruses, malware and other unauthorised intrusions. Vapour shall have no liability for any direct or indirect costs suffered by the Customer in the event of any penetration of the firewall by any third party or third party software save in cases of fraud or negligence on the part of Vapour, its employees or sub-contractors. Where the Customer opt to use its own firewall application, Vapour shall have no liability for any malfunction, failure or inadequacy of such application whether or not it has been approved by Vapour.
- 2.7 The Customer understands and accepts that the Vapour Access Services are inherently technical and this may create limitations to what Vapour are able to deliver.
- 2.8 The surveys and questionnaires from Vapour and its sub-contractors may result in Vapour determining that amendments are required to the PAC. Where this is the case Vapour will submit a replacement PAC to the Customer. If the Customer does not agree the replacement PAC, both the original PAC and replacement PAC will be cancelled by Vapour 14 days after notification of such amendments. In some cases Vapour will not provide a replacement PAC and any amendments to the PAC or the Charges may be agreed instead by email correspondence.
- 2.9 The Customer may from time to time during the term of the Agreement request to upgrade the bandwidth on the Vapour Access Services circuits. Where possible, Vapour will deliver this increase and additional charges will apply, which will be an amendment to the existing Agreement.

3. EQUIPMENT

Vapour will not be liable for any failure to meet any service levels or any failure of the Vapour Access Services or any other obligations if such failure has been found to be caused by the connection of any equipment which is not technically compatible, connected using the router provided by Vapour or used in compliance with any applicable instructions, standards or laws.

4. SUPPORT

- 4.1 Vapour will provide such support as is detailed in the PAC, Customer Support Plan and/or Service Level Agreement to maintain the Vapour Access Services in normal operating conditions in accordance with the Agreement.
- 4.2 Vapour may levy an additional charge at its then current rates if:
- 4.2.1 support is required outside the normal support times specified in the PAC, Customer Support Plan or Service Level Agreement; or
 - 4.2.2 the problem has arisen due to the Customer changing parameters and Vapour Access Services or software configurations without prior written notification to and the consent of Vapour.
- 4.3 Vapour's sole obligation in respect of a support request shall be to use its reasonable endeavours to resolve that request.

5. ACCEPTABLE USE POLICY

- 5.1 The Customer agrees to Vapour's Acceptable Use Policy and Fair Use Policy and accepts that a breach of either policy may result in the Vapour Access Services being suspended or disconnected. Vapour shall have no liability for any direct or indirect losses incurred or suffered by the Customer as a result of such suspension or disconnection.
- 5.2 The Customer assumes entire responsibility for the use of the Vapour Access Services, software and equipment (whether or not provided by Vapour) and of the internet. The Customer acknowledges and agrees that the internet contains materials which are sexually explicit and/or may be offensive and is accessible by persons who may attempt to breach the

security of our network or your security. Vapour has no control over, and expressly disclaims any liability or responsibility for, such materials or actions.

6. CHARGES AND PAYMENT

- 6.1 The Charges for the Access Service shall be as set out in the PAC.
- 6.2 Vapour shall be entitled to charge the Customer with effect from the date of completion of the installation of each circuit as notified by Vapour to the Customer.
- 6.3 Vapour shall be entitled to charge the Customer for any additional elements detailed in the PAC from the date when they are first configured for use.

7. TERM AND TERMINATION

- 7.1 Unless otherwise agreed, provision of the Vapour Access Services shall be deemed to commence on the Connection Date.
- 7.2 Where an Agreement includes the provision of more than one Vapour Access Service, the Minimum Period will commence from the date the final Site on that Agreement has been installed and it is ready to use by the Customer.

**Schedule
Defined Terms**

Customer Support Plan	the customer support plan in place between Vapour and the Customer for the Vapour Access Services from time to time
Connection Date	the date on which Vapour is in a position to and has agreed to commence the provision of the Services to the Customer (or the date on which it actually commences providing the Services, if earlier)
Fair Use Policy	Vapour's policy regarding the fair use of the Vapour Access Services as may be in effect from time to time, a copy of which is available on request
Service Agreement Level	any service level agreement applicable to the Vapour Access Services (or any part of them) from time to time
Vapour Services Access	Vapour's connectivity services, as more fully described in the PAC and any updated specification that Vapour may issue to the Customer from time to time



Product Schedule
Vapour Voice



Vapour Media Limited
Vapour Voice

Vapour offers a range of solutions, predominately delivered over our MPLS network.

The receipt of our services is subject to your agreement to our terms and conditions. Our general terms and conditions are set out in a separate document (we will be happy to provide a copy on request).

Some of our services have specific terms that are only relevant to that particular service. To keep our terms easy to read, and to avoid providing you with terms that are not relevant to you, we set those terms out in separate product schedules, such as this one. This product schedule contains the additional and alternative terms that are applicable to our Vapour Voice services.

It's therefore important that you read this product schedule in conjunction with the PAC, the terms and conditions and any other applicable product schedules carefully before you place an order, and that you keep a copy of each for future reference.

1. ABOUT THIS PRODUCT SCHEDULE

- 1.1 The terms set out in this Product Schedule are applicable to customers receiving the Vapour Voice Services. This will be indicated in the PAC.
- 1.2 These terms supplement Vapour's general terms and conditions and, to the extent that they conflict with those terms, override these terms in respect of the Vapour Voice Services. For the avoidance of doubt, save to the extent that these terms conflict with the general terms and conditions, the general terms and conditions apply to the Vapour Voice Services.
- 1.3 Certain words in the Agreement documents are capitalised to indicate that they have a special meaning. The meaning of terms which are used throughout the Agreement documents is explained in the schedule to Vapour's general terms and conditions. The meaning of terms which are only used in this Product Schedule is explained in the schedule to this Product Schedule.

2. THE VAPOUR VOICE SERVICES

- 2.1 Vapour shall provide the Vapour Voice Services with reasonable skill and care to the standard that would be expected of a competent telecommunications service provider. However, the Customer acknowledges that it is not possible to provide the Vapour Voice Services which are entirely free of faults and Vapour does not undertake to do so.
- 2.2 Vapour shall comply with its obligations as set out in the Customer Support Plan. If Vapour fails to meet the service levels the Customer shall be entitled to the applicable remedies set out in the Customer Support Plan (if any). Such remedies shall be the Customer's sole and exclusive remedy for Vapour's failure to meet the service levels or other unavailability of or faults affecting the Vapour Voice Services.
- 2.3 The Customer must take such steps as are reasonably necessary to ensure access to the Vapour Voice Services and in particular to ensure that it orders sufficient lines, ports and other Equipment to meet reasonably expected demand.
- 2.4 Vapour reserves the right to suspect or restrict access to the Vapour Voice Services if at any time the number of calls or attempted calls to the Customer causes or is likely to cause congestion or other disruption within any part of Vapour's (or its suppliers' or sub-contractors') systems.
- 2.5 The system is designed with a contention ratio of 10:1 and no warranty is made for performance levels greater than such limit.
- 2.6 The Customer must provide Vapour with at least 72 hours prior written notice of a Mass Call Event. Where the Customer fails to provide the requisite notice and as a result there is disruption to Vapour's (or its suppliers' or sub-contractors') network the Customer shall be liable for any costs incurred by Vapour as a result of such disruption, including any payments

that Vapour is required to make (or reasonably considers it appropriate to make) to other its suppliers or sub-contractors or to other customers affected by the disruption.

- 2.7 The Customer must supply a forecast of expected monthly inbound and outbound transaction volumes. Vapour may reject any forecast which it reasonably considers to be excessive or unrealistic and substitute its own forecast. Vapour shall be under no obligation to make the Vapour Voice Services available for traffic volumes exceeding 110% of the pro-rata volumes notified by the Customer (or substituted by Vapour) and may in such circumstances suspend or terminate the Services in its discretion.
- 2.8 Vapour may issue an RSA SecurID token to the Customer in order to access the Vapour Voice Services on Vapour's network. The RSA SecurID token will be issued on condition that it is retained securely by the Customer at all time and used only for access to the Vapour Voice Services. The username and password issued with the token are confidential and must not be disclosed to third parties.
- 2.9 The Customer warrants that it will restrict access to each computer used to gain access to Vapour's network to authorised users only and will be protected by up-to-date anti-virus and other anti-malware software throughout the term of the Agreement. Vapour reserves the right to disable the RSA SecurID token without notice if it suspects that the above conditions are not being complied with, or that use of the token presents a security threat or other threat of unauthorised access to Vapour's network.
- 2.10 The SIP trunks provided by Vapour are designated as end user ISDN replacement infrastructure and should be directly connected to the end user's device (usually a PBX or media gateway). The SIP trunks should not be connected into a hosted or network layer aggregation device whether this is a switch, PBX, dialler media gateway or other unspecified device. For the avoidance of doubt the SIP trunks are not to be used as IP interconnects (each trunk is provided for a single customer end user). Vapour may suspend the Vapour Voice Services if it or its supplier or sub-contractor reasonably believes that the Customer or another user is using the SIP trunks as a method of inter-connection.
- 2.11 Where Vapour authorises the Customer to access the Vapour Voice Services via a SIP device supplied by a third party the Customer must sign a third party SIP device agreement and the Customer warrants that it will comply with such agreement.

3. EQUIPMENT

- 3.1 The Vapour Voice Services have certain hardware compatibility requirements and should only be used with Equipment supplied by Vapour or other equipment which has been expressly approved by Vapour. Vapour provides no warranties and cannot accept no responsibility in respect of the use of the Vapour Voice Services with unapproved hardware.
- 3.2 Where Equipment is sourced from Vapour, this includes a manufacturer's warranty. Should any defect or other issue arise with the Equipment then the Customer shall make a claim under the manufacturer's warranty in accordance with its terms.

4. SUPPORT

- 4.1 Vapour will provide such support as is detailed in the PAC and/or Customer Support Plan to maintain the Vapour Voice Services in normal operating conditions in accordance with the Agreement.
- 4.2 Vapour may levy an additional charge at its then current rates if:
- 4.2.1 support is required outside the normal support times specified in the PAC or Customer Support Plan; or
 - 4.2.2 the problem has arisen due to the Customer changing parameters and Vapour Voice Services or software configurations without prior written notification to and the consent of Vapour.
- 4.3 Vapour's sole obligation in respect of a support request shall be to use its reasonable endeavours to resolve that request.

5. AUTOMATED SPEECH RECOGNITION

- 5.1 If Automated Speech Recognition (**ASR**) software is used in the provision of the Vapour Voice Services the Customer will require a licence from Nuance Inc for the "conversation" part of the call (as described in paragraph 5.2 below)
- 5.2 For the purposes of clause 5.1 a "conversation" commences when a telephone caller is first connected to a computer system that detects the caller's speech (using either Nuance's or another party's speech detection technology) for speech recognition purposes through use of Nuance Software (the **Computer System**) and continues until the first of the following occurs:
- 5.2.1 the caller's telephone (or equivalent device) completely terminates the speech recognition portion of the connection between the telephone (or equivalent device) and the network or networks that connect it to the Computer System);
 - 5.2.2 the telephone caller's connection is transferred to a live operator / agent;
 - 5.2.3 the caller intentionally transfers the connection to a resource which is independent of the Computer System; or
 - 5.2.4 although the caller may remain connected to the Computer System, the Computer system will not further process the caller's spoken words for speech recognition purposes prior to termination of the call as defined in paragraph 5.2.1 above).

6. PCI DSS

- 6.1 If the PAC expressly states that the Vapour Voice Services are PCI DSS compliant, Vapour warrants that during the term of the Agreement the Vapour Voice Services (or the relevant part of them) together with the systems used for the Vapour Voice Services will be certified in accordance with PCI DSS in relation to data security (a copy of such certification shall be available on written request) and that the systems will comply with the most current versions of the applicable PCI DSS.
- 6.2 If the PCI DSS provides for choices or alternatives as to compliance, such choices shall be made by Vapour (and/or its suppliers) its sole discretion.
- 6.3 To the extent permitted by law, Vapour shall have no liability to the Customer for PCI DSS compliance to the extent that the Customer has failed to comply with its own obligations set out in the Agreement.

7. CALL RECORDING

- 7.1 The Customer acknowledges that the recording of telephone calls is governed by very strict legal rules, and that the recording of calls in breach of these rules could result in criminal or civil liability.
- 7.2 The Customer warrants that prior to enabling and utilising the call recording facilities it shall fully familiarise itself with all applicable rules and regulations regarding call recording and that it shall keep itself fully updated with any changes that may be made to such rules or regulations from time to time.
- 7.3 The Customer acknowledges and accepts that compliance with rules and regulations regarding call recording is solely its own responsibility and shall strictly comply with all rules and regulations applicable to call recording at all times, both in respect of making the recordings and in respect of how the recordings are stored, used and disclosed.
- 7.4 Vapour may from time to time provide advice on call recording, either generally or to the Customer specifically. However, the Customer acknowledges that Vapour does not specialise in providing legal advice and that any advice is given primarily to enable effective use of the Vapour Voice Services. Accordingly, any advice given by Vapour shall not be treated as a substitute for the Customer conducting its own research and/or obtaining its own professional advice or otherwise relied upon in any way with regard to legal compliance.
- 7.5 The Customer will indemnify, keep indemnified and hold Vapour harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses on a

solicitor / own client basis) suffered or incurred by or awarded against Vapour as a result of or in connection with any claim relating to the Customer's failure to comply with this clause 7.

8. CALLS TO EMERGENCY SERVICES

8.1 The Vapour Voice Services are not intended to be used for calls to emergency services. Vapour recommends that the Vapour Voice Services are not used for emergency calls except where absolutely necessary and does not accept any liability as a result of the failure or deficiency of such calls. The Customer must ensure that it has alternative arrangements in place in the case that such a call is required and that all users are aware of such alternative arrangements for making emergency calls.

8.2 Notwithstanding paragraph 8.1, the Customer must ensure that all location information (including address information, caller line identification (**CLI**) and associated site address) is up-to-date and accurate in all respects, and that all necessary equipment is configured to present a CLI that correctly corresponds to the Site, so that Vapour is able to provide accurate location information to emergency services if necessary, and shall promptly notify Vapour in the event of any changes to such information.

8.3 The Customer shall indemnify, keep indemnified and hold Vapour harmless from and against all costs, claims, damages, liabilities, losses and demands (including any fines or penalties) relating to or arising from or in connection with emergency services being dispatched to a location other than the location to which the call to emergency services originated as a result of the Customer's failure to comply with its obligations in paragraphs 8.1 or 8.2.

9. TELEPHONE NUMBERS

9.1 Any telephone numbers allocated to the Customer do not belong to the Customer, and the Customer must not apply for registration of such telephone numbers as a trade mark, service mark or domain name, whether on its own or in conjunction with some other words or trading style nor do or allow to be done anything which would suggest that it had any rights in the telephone numbers (other than to use the telephone numbers as envisaged by the Agreement).

9.2 The Customer must not purport to sell or transfer, or agree to sell or transfer, any telephone number allocated to it to a third party.

9.3 Vapour may from time to time decide to withdraw or change any telephone number or code allocated to the Customer on reasonable notice (for example for commercial, operational, technical or legal reasons). The Customer shall not be entitled to any compensation or reimbursement of costs incurred as a result of such change.

9.4 Where the Customer requests the allocation of a specific telephone number (or type of number) it shall be the Customer's responsibility to ensure that the number is appropriate and can be legally used for the Customer's intended purposes.

9.5 Where an allocated telephone number falls within a range of numbers classified from time to time by Ofcom (or any other competent authority) as being for the provision of a particular type of service, the Customer must ensure that any service provided by the Customer using that number at all times conforms with the type allocated to that number range.

10. CHARGES AND PAYMENT

10.1 In addition to the Charges, the Customer shall be responsible for any costs incurred by the use of the Customer's Services and charged to Vapour by a network operator, service provider or other body, including any costs incurred as a result of unauthorised or fraudulent use of the Service.

10.2 Vapour may from time to time impose a monthly minimum call spend at a reasonable level to make it viable to continue offering the Vapour Voice Services. Any minimum spend in effect at the date on which the Vapour Voice Services commence will be notified to the Customer prior to that date and Vapour will notify the Customer in writing if there are changes to the minimum spend (including removing the minimum spend or imposing a minimum spend where one had not previously been in effect).

- 10.3 Where Vapour has notified the Customer of a monthly minimum call spend in accordance with paragraph 10.2 and in any month the total call spend is less than the applicable minimum spend (whether or not the Agreement was terminated part way through that month) Vapour shall be entitled to invoice the Customer for the balance of the minimum spend for that month.
- 10.4 Where the Customer purchases a “voice bundle”, the following provisions shall apply:
- 10.4.1 where the bundle includes a set number of minutes, the voice bundle shall cover all Included Calls, up to the number of minutes included;
 - 10.4.2 where the bundle allows unlimited calls, the voice bundle shall cover all Included Calls, subject to Vapour’s Fair Use Policy;
 - 10.4.3 any calls which are:
 - (a) Included Calls in excess of the number of minutes included within the bundle;
 - (b) Included Calls made contrary to Vapour’s Fair Use Policy; or
 - (c) not Included Calls,will be charged based on Vapour’s standard rate card unless otherwise agreed;
 - 10.4.4 the Charge for the bundle will be payable monthly in advance, with any calls outside the bundle (as referred to at paragraph 10.4.3) chargeable monthly in arrears;
 - 10.4.5 bundled minutes will not roll over from month to month and any unused minutes will be forfeited; and
 - 10.4.6 the Customer may supplement its bundle by purchasing:
 - (a) bolt-ons, which (once purchased) remain in effect for the remainder of the Agreement and add additional minutes each month for a fixed monthly cost; and/or
 - (b) top-ups, which add additional minutes on a one-off basis for a particular month for a fixed cost.
- 11. TERM AND TERMINATION**
- 11.1 Unless otherwise agreed, provision of the Vapour Voice Services shall be deemed to commence on the earlier of:
- 11.1.1 the date on which the Customer first makes live use of the Vapour Voice Services; and
 - 11.1.2 the date which is four weeks from the date on which the Vapour Voice Services were first made available for live use to the Customer.
- 11.2 If the Customer wishes to port any numbers away from Vapour following termination then it should notify Vapour as soon as reasonably practicable and Vapour will, where possible, assist the Customer with such porting. A charge will be levied in accordance with Vapour’s then current rates for number porting. The Customer should be aware that it will not be entitled to port a number which it has had less than 12 months continuous use of for the same service immediately prior to termination.

Schedule Defined Terms

Customer Support Plan	the customer support plan in place between Vapour and the Customer for the Vapour Voice Services from time to time
Fair Use Policy	Vapour's policy regarding the fair use of the Vapour Voice Services as may be in effect from time to time, a copy of which is available on request
Included Calls	calls to geographical 01 and 02 numbers and mobile calls in charge bands FM1, 3, 4, 5 and 6
Mass Call Event	any event or occurrence which will or may result in a higher volume of calls than usual being made using the Vapour Voice Services
PCI DSS	the Payment Card Industry Data Security Standard laid down by the Payment Card Industry Security Standards Council of at least level 1
Vapour Voice Services	Vapour's cloud-based telephony platform, as more fully described in the PAC and any updated specification that Vapour may issue to the Customer from time to time



Product Schedule

Vapour Cloudware



VAPOUR

cloud, made easy

Vapour Media Limited **Vapour Cloudware**

Vapour offers a range of Vapour Cloudware Services, including Cloud Storage, Cloud Backup and Cloud Servers.

The receipt of our services is subject to your agreement to our terms and conditions. Our general terms and conditions are set out in a separate document (we will be happy to provide a copy on request).

Some of our services have specific terms that are only relevant to that particular service. To keep our terms easy to read, and to avoid providing you with terms that are not relevant to you, we set those terms out in separate product schedules, such as this one. This product schedule contains the additional and alternative terms that are applicable to our Vapour Cloudware services.

It's therefore important that you read this product schedule in conjunction with the order form, the terms and conditions and any other applicable product schedules carefully before you place an order, and that you keep a copy of each for future reference.

1. ABOUT THIS PRODUCT SCHEDULE

- 1.1 The terms set out in this Product Schedule are applicable to customers receiving the Vapour Cloudware Services. This will be indicated in the Order Form.
- 1.2 These terms supplement Vapour's general terms and conditions and, to the extent that they conflict with those terms, override these terms in respect of the Vapour Cloudware Services. For the avoidance of doubt, save to the extent that these terms conflict with the general terms and conditions, the general terms and conditions apply to the Vapour Cloudware Services.
- 1.3 Certain words in the Agreement documents are capitalised to indicate that they have a special meaning. The meaning of terms which are used throughout the Agreement documents is explained in the schedule to Vapour's general terms and conditions.

2. THE VAPOUR CLOUDWARE SERVICES

- 2.1 The Vapour Cloudware Services are provided for access over the internet or over Vapour's MPLS network from the Customer's own systems. The Customer must ensure that it has sufficient connectivity and bandwidth to access the Services and download any necessary software, and that its hardware and software configuration meets any requirements notified to it by Vapour from time to time.
- 2.2 Save where the Customer has expressly contracted for back-up services, back-up services are not included within the Vapour Cloudware Services, and the Customer agrees to maintain its own copies of all data it hosts on Vapour's servers. Vapour shall not be responsible for any losses caused as a result of the Customer's failure to comply with this clause 2.2.

3. HOURS OF SUPPORT

- 3.1 Incidents can be raised by the customer logging the call to the Vapour support team via ticket@vapourcloud.com. On receipt of your email, the incident will be automatically logged with the Vapour support system, which will provide a unique reference number and assign a priority as defined below. This reference number is important and should be quoted in all communication regarding the incident/request.
- 3.2 If required then a member of the Vapour support team will contact the Customer to troubleshoot the issue, escalating it to the appropriate specialist support groups if required.

Priority	Definition	Response Times	Target Resolution Times
1	The entire Service is "down" and inaccessible. Priority 1 incidents shall be reported by telephone only.	Within two Normal Business Hours.	Four Normal Business Hours. Continuous effort after initial response and with Customer co-operation.
2	Operation of the Services is severely degraded. Priority 2 incidents shall be reported by telephone only.	Within four Normal Business Hours.	Within two Business Days after initial response.
3	Operational Incident but a work around already exists so that service can continue with little or no impact	Within 12 Normal Business Hours.	Within seven Business Days after initial response.
4	Incidents not service affecting and in scope Service Requests	Within 24 Normal Business Hours.	Next release of Software. Reasonable endeavours (target 24hrs) for in scope Service requests.

3.3 Vapour does not warrant that the Customer's use of the Vapour Cloudware Services will be uninterrupted or error-free or completely secure, nor that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements and is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4. **PASSWORDS**

- 4.1 The Customer is responsible for the security and proper use of all user identities (**User IDs**) and passwords used in connection with the Vapour Cloudwaer Services and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised personnel.
- 4.2 The Customer must immediately inform Vapour if there is any reason to believe that a user ID or password has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.
- 4.3 Vapour reserves the right to suspend User IDs and passwords if at any time Vapour considers that there is or is likely to be a breach of security or misuse of the Vapour Cloudware Services.
- 4.4 Vapour reserves the right at its sole discretion to require the Customer to change any or all of the passwords used by the Customer in connection with the Vapour Cloudware Services.
- 4.5 The Customer must immediately inform Vapour of any changes to the information the Customer supplied when registering for the Vapour Cloudware Services.

5. **VIRUS PROTECTION**

- 5.1 The Customer agrees to ensure its local computers accessing the Vapour Cloudware Services have the latest security patches and up to date anti-virus software and are secured from unauthorised access.
- 5.2 In the event that Vapour is alerted that that the Customer's systems have been compromised by a virus or hacker, Vapour will contact the Customer and ask it to secure/clean its computer(s). In the event the Customer's computer(s) causes network issues, then Vapour has the right to firewall the Customer's computer(s) and/or disconnect the Customer from the Services in order to restore the network stability.

6. **CONTENT AND CUSTOMER DATA**

- 6.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 6.2 The Customer agrees not to violate the privacy, intellectual property rights (including copyright), contractual rights or any other rights of any person. The Customer agrees to pay for all royalties, fees, and any other monies owing any person by reason of any content uploaded by the Customer to the Vapour Cloudware Services.

7. CUSTOMER EQUIPMENT

- 7.1 The Customer must ensure that any equipment connected to or used with the Vapour Cloudware Service must be technically compatible and must be connected and used in accordance with any applicable instructions, safety and security procedures.
- 7.2 Any customer equipment stored at a Vapour data centre shall be at the Customer's risk and the Customer shall be responsible for ensuring, at all times, that its equipment and ancillary equipment is fully insured against all risks including public liability, fire, theft and flood. Such insurance shall be maintained with a reputable insurer and will include a waiver of subrogation from the Customer's insurers in favour of Vapour and the Customer shall produce on demand for inspection by Vapour adequate proof of such insurance.

8. USER SUBSCRIPTIONS

- 8.1 Subject to the Customer purchasing the user subscriptions, Vapour hereby grants to the Customer a non-exclusive, non-transferable right to permit its authorised users to use the Vapour Voice Services during the term of the Agreement solely for the Customer's internal business operations.
- 8.2 In relation to the authorised users, the Customer undertakes that:
- 8.2.1 the maximum number of authorised users that it authorises to access and use the Vapour Voice Services shall not exceed the number of user subscriptions it has purchased from time to time;
 - 8.2.2 it will not allow any user subscription to be used by more than one individual authorised user;
 - 8.2.3 each authorised user shall keep a secure password for his use of the Vapour Voice Services, that such password shall be changed no less frequently than monthly and that each authorised user shall keep his password confidential;
 - 8.2.4 it shall maintain a written, up to date list of current authorised users and provide such list to Vapour within 5 Working Days of Vapour's written request at any time;
 - 8.2.5 it shall permit Vapour to audit the Vapour Voice Services in order to establish the name and password of each authorised user. Such audit may be conducted no more than once per quarter, at Vapour's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 8.2.6 if any of the audits referred to in this clause 8.2 reveal that any password has been provided to any individual who is not an authorised user, then without prejudice to Vapour's other rights, the Customer shall promptly disable such passwords and Vapour shall not issue any new passwords to any such individual; and
 - 8.2.7 if any of the audits referred to in this clause 8.2 reveal that the Customer has underpaid Charges to Vapour, the Customer shall pay to Vapour an amount equal to such underpayment within 10 Working Days of the date of the relevant audit.
- 8.3 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this Agreement:
- 8.3.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the

- Vapour Cloudware Services or any associated documentation in any form or media or by any means; or
- 8.3.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human- perceivable form all or any part of the Vapour Cloudware Services; or
 - 8.3.3 access all or any part of the Vapour Cloudware Services in order to build a product or service which competes with the Services; or
 - 8.3.4 use the Vapour Cloudware Services to provide services to third parties; or
 - 8.3.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Vapour Cloudware Services available to any third party except the authorised users, or
 - 8.3.6 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 8.
- 8.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Vapour Cloudware Services and, in the event of any such unauthorised access or use, promptly notify Vapour.
- 8.5 The rights provided under this clause 8 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

9. ADDITION AND REMOVAL OF USER SUBSCRIPTION

- 9.1 Subject to as provided herein, the Customer may, from time to time during the term of the Agreement, purchase additional user subscriptions via Vapour's website and, subject to credit approval, Vapour shall grant access to the Vapour Cloudware Services to such additional authorised users in accordance with the provisions of the Agreement.
- 9.2 The Customer shall have the ability to remove authorised users through Vapour's website. If an authorised user is removed the Customer shall pay the Charges for the Minimum Period in respect of that removed authorised user.
- 9.3 It is the Customer's responsibility to maintain adequate safeguards in relation to which individual(s) at the Customer may add or remove authorised users.

10. CLOUD STORAGE

- 10.1 The Cloud Storage service provides a volume of cloud storage which is presented as a drive on the Customer's device. It also provides the ability to selectively synchronise files to and from a local device, to enable offline working and provides administrators with the ability to manage cloud storage via the control panel. The Customer can increase and decrease its allocated amount of data and manage its users and access rights to the shared files and folders.
- 10.2 The Service is delivered from UK Hosting facilities and presented to users as a mapped drive within their existing directory structure.
- 10.3 All data on the Cloud Storage platform is backed up on a daily basis and retained for 10 working days, unless otherwise agreed. Restore requests can be made via e-mail by contacting ticket@vapourcloud.com.
- 10.4 Up-to-date anti-virus software should always be used on any device accessing the Cloud Storage.
- 10.5 Storage is charged on a monthly basis based on the peak storage used within that month.

11. CLOUD BACKUP

- 11.1 The Cloud Backup service is a backup and recovery solution, housed only in UK data centres. All customer data is encrypted prior to being transmitted offsite.
- 11.2 A software agent may be required to be installed on every device the Customer wants to back up. Vapour will set up a backup server for the Customer and manages the initial deployment and configuration of the agents.
- 11.3 All backups are performed to the default schedule unless otherwise agreed between the Customer and Vapour. The Customer will receive a scheduled success/failure report via email for all devices covered by the Cloud Backup service.
- 11.4 Vapour engineers will remotely install any backup software required.
- 11.5 Vapour engineers will configure the Customer's backup jobs based on the information provided in the Customer's server information document. If appropriate, they may also advise on best practices regarding backup configurations.
- 11.6 Vapour will configure the retention period of 1 month on all of the Customer's backup data unless requested otherwise.
- 11.7 Vapour will perform regular monitoring of the backup infrastructure to check performance and fault prevention.
- 11.8 Vapour will provide a monitored support system where the Customer can make requests and report incidents.
- 11.9 Vapour engineers will perform troubleshooting on any failed backup jobs upon a request from the Customer via the support system. The failed backup job can be re-initiated or escalated to the relevant parties within scope of the Cloud Backup service.
- 11.10 Vapour engineers will perform troubleshooting of restore failures on request. The time it takes to transmit a restore file to the Customer will depend upon the size of the file and the bandwidth. If the Customer requires a restore file to be physically delivered to site, this will be at an additional cost.
- 11.11 Vapour's data centre access is strictly limited to Vapour engineers and any authorised third-party sub-contractors. Data centres are monitored 24 hours a day, seven days a week through closed circuit video surveillance and requiring authentication for access.
- 11.12 Vapour may at times interrupt the backup services to perform emergency or essential maintenance during the daily backup window of 6pm to 8am UK time. If any maintenance work is performed within this period, then Vapour engineers will hold any Customer backup jobs and resume them once the work is complete.

12. CLOUD SERVERS

- 12.1 The Cloud Server service provides the ability to use hosted server instances and is delivered from UK hosting facilities. The Customer can select from the range of available "bands". Each band provides the Customer with an amount of resources (CPU*, RAM, SSD and HDD) required for their virtual servers.

* One Compute Unit (CPU) provides the equivalent capacity of a single core of an Intel E5-2670 2.6GHz Xeon processor.
- 12.2 Customer VLANs are created as part of the on-boarding process, with 1 external IP address. Additional external IP addresses are available on request at an additional charge.
- 12.3 Although Vapour will use reasonable endeavours not to change the allocated IP address and available outbound TCP network ports, this may be necessary from time to time for technical or other reasons.

13. CHARGES AND PAYMENT

- 13.1 If the Customer exceeds its disk space allowance, Vapour shall charge the Customer for excess disk space at its then current data storage fees.
- 13.2 Vapour shall be entitled to charge at its standard time and materials rates for all time spent in resolving any complaints or reports received from any governmental or other competent authority or from any emergency service organisation in relation to the Customer equipment or the Vapour Cloudware Services. Save where prohibited from doing so by applicable law or regulation, Vapour:
- 13.2.1 shall inform the Customer without delay of any such complaint or report;
- 13.2.2 wherever possible, shall not respond to the relevant authority or organisation without the Customer's prior consent (which shall not be unreasonably withheld or delayed); and
- 13.2.3 shall consult with the Customer with regard to such complaint or report.

14. TERM AND TERMINATION

- 14.1 Unless otherwise agreed, provision of the Vapour Cloudware Services shall be deemed to commence on the date that they are first made available to the Customer.
- 14.2 The Customer may terminate the Vapour Cloudware Services at any time on written notice to Vapour, save that such termination may not take effect during the Minimum Period. Where termination occurs part way through a billing month, the Customer shall remain liable for the Charges for the whole of that month.
- 14.3 Except where termination of the Agreement is as a result of the Customer's default or insolvency, Vapour will use reasonable endeavours to make any of the Customer's data held on its servers available to the Customer for a period of 3 days following termination such that the Customer may download copies of such data that it wishes to retain.
- 14.4 Subject to clause 14.3, Vapour shall be entitled to irretrievably delete from its servers any of the Customer's data which remains on its servers following termination.

15. CHANGES

- 15.1 Due to the nature of cloud services, the Customer acknowledges that they may change from time to time to improve their functionality or usability, add new features, remove features it considers to be obsolete, fix errors or address feedback received from customers, and that such changes shall not be subject to the formal change procedure set out in Vapour's general terms and conditions (but Vapour shall endeavour to minimise any disruption caused as a result of the implementation of such changes).
- 15.2 Any changes outside the scope of clause 15.1 will be subject to the standard change procedure set out in Vapour's general terms and conditions.

16. SERVICE LEVEL AGREEMENT – CLOUD STORAGE

- 16.1 Vapour will endeavour to ensure that the Customer is able to access the Cloud Storage service for at least 99.95% of the total hours in any calendar month.
- 16.2 If Vapour fails to meet the availability target contained in clause 16.1 in any calendar month as a result of Downtime then the Customer shall be entitled (as its sole and exclusive remedy) to apply for Service Credits calculated as follows:
- | Actual service level delivered | Service Credit |
|---------------------------------------|--|
| 99.95% > actual service level > 99.0% | 10% of monthly fee for the Cloud Storage |
| actual service level < 99.0% | 25% of monthly fee for the Cloud Storage |

- 16.3 Claims made pursuant to clause 16.2 above must be made within one calendar month of the month to which it relates, and will only be considered if they exceed £10.
- 16.4 Downtime must be reported by the Customer at the time of the Downtime to allow Vapour to reasonably fulfil its obligations under this clause 16.
- 16.5 For the avoidance of doubt, Vapour shall at all times endeavour to ensure (regardless of the reason for any Downtime) that the disruption caused to the Customer is minimised and that the Cloud Storage service is restored as soon as reasonably practicable.

17. SERVICE LEVEL AGREEMENT – CLOUD BACKUP AND REPLICATION

- 17.1 Vapour will endeavour to ensure that requests for a file or VM restore from the Cloud Backup service are initiated within 4 working hours of receipt of a ticket sent to ticket@vapourcloud.com providing the ticket contains:

- 17.1.1 a clear definition of the file, folder or VM name to be restored;
- 17.1.2 the file path and/or server name, as appropriate;
- 17.1.3 the restore point from which the restore should be attempted; and
- 17.1.4 the target location for the restored file/folder/VM.

- 17.2 If the Customer has purchased the server replication service, Vapour will endeavour to ensure that requests to restore a replica VM to a live hosted server are initiated within 4 working hours of receipt of a ticket sent to ticket@vapourcloud.com providing the ticket contains:

- 17.2.1 a clear definition of the VM to be restored; and
- 17.2.2 the restore point from which the restore should be attempted.

- 17.3 If Vapour fails to meet the service levels described in 17.1 or 17.2 (other than as a result of an Excluded Issue), the Customer shall be entitled to apply for service credits calculated as follows:

Actual service level delivered	Service Credit
For each failure to react within the specified time period	10% of monthly Charges for the backup of that server

- 17.4 Claims made pursuant to clause 17.3 above must be made within one calendar month of the month to which it relates, and are limited to one claim per day.
- 17.5 Service failure must be reported by the Customer at the time of the service failure to allow Vapour to reasonably fulfil its obligations under this clause 17.
- 17.6 For the avoidance of doubt, Vapour shall at all times endeavour to ensure (regardless of the reason for any Downtime) that the disruption caused to the Customer is minimised and that the services are restored as soon as reasonably practicable.
- 17.7 For the server replication service, the service price includes one failover to a Cloud Server for each VM per year, and includes operating that VM as a Cloud Server for one calendar month. Additional failovers within one year, and extending the Cloud Server beyond one calendar month will incur additional charges.
- 17.8 For the Server Replication service, the Service Levels associated with the Cloud Server once a failover has been triggered will be as per clause 18 below.

18. SERVICE LEVEL AGREEMENT – CLOUD SERVERS

- 18.1 Vapour will endeavour to ensure that the Customer is able to access the Cloud Server service for at least 99.95% of the total hours in any calendar month.
- 18.2 If Vapour fails to meet the availability target contained in clause 18.1 in any calendar month as a result of Downtime the Customer shall be entitled to apply for Service Credits calculated as follows:

	Actual service level delivered	Service Credit
	99.95% > actual service level > 99.0%	10% of monthly fee for that hosted server
	actual service level < 99.0%	25% of monthly fee for that hosted server
18.3	Claims made pursuant to clause 18.2 above must be made within one calendar month of the month to which it relates, and will only be considered if they exceed £10.	
18.4	Downtime must be reported by the Customer at the time of the Downtime to allow Vapour to reasonably fulfil its obligations under this clause 18.	
18.5	For the avoidance of doubt, Vapour shall at all times endeavour to ensure (regardless of the reason for any Downtime) that the disruption caused to the Customer is minimised and that the services are restored as soon as reasonably practicable.	

Schedule Defined Terms

Cloud Backup	the cloud backup service described in more detail in clause 11
Cloud Server	the Cloud server service described in more detail in clause 12
Cloud Storage	the Cloud server storage described in more detail in clause 10
Downtime	a period of time commencing when the Customer reports to Vapour via a support ticket to ticket@vapourcloud.com that the Customer cannot access the Vapour Cloudware Services, by reason of a failure on the part of Vapour to provide the relevant Services, except where that failure arises out of an Excluded Issue
Emergency Outage	a period of time during which the Service is suspended on the part of Vapour for unplanned maintenance work required to be undertaken by Vapour to prevent the failure or serious degradation of the Service. Vapour will endeavour to undertake Emergency Outages outside business hours
Excluded Issue	any of (a) issues caused by failures of the Customer's equipment, (b) power or network failure at the Customer's site, (c) Planned Outages or Emergency Outages and (d) issues caused by Force Majeure Events
Planned Outage	a period of time during which the Service is suspended for the purposes on the part of Vapour of planned maintenance work required to be undertaken by Vapour to ensure the continuing quality of the service. Vapour will aim to provide three days' notice of such Planned Outage. Vapour will endeavour to undertake Planned Outages outside business hours
Vapour Cloudware Services	Cloud Storage, Cloud Backup and Cloud Servers, as more fully described in the PAC and any updated specification that Vapour may issue to the Customer from time to time