

Vapour Media Limited
(trading as Vapour Cloud)

Terms & Conditions



Vapour Media Limited

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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 make 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.
 - 10.9.6 Where a service has been suspended and subsequently Vapour agrees to remove the suspension the Customer agrees to pay a re-activation fee of £195 (excluding vat).

- 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. Where a service has been suspended and subsequently Vapour agrees to remove the suspension the Customer agrees to pay a re-activation fee of £195 (excluding vat).
- 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 11.7, 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 shall be treated as having arisen 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 General Data Processing Regulation (GDPR) and 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. Vapour policy in respect of GDPR is published separately and is available upon request. The Customer hereby agrees to be bound by provisions and obligations within Vapour's GDPR Policy.
- 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.
- 6.4 Vapour shall be entitled to charge the Customer for additional charges such as excess dig costs or additional PSTN install costs resulting from the Customer's location or site requirements.

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.

8. SERVICE LEVEL AGREEMENT – ACCESS

- 8.1 Vapour will endeavour to ensure that the Customer is able to access the Access service for at least 99.9% of the total hours in any calendar month.
- 8.2 If Vapour fails to meet the availability target contained in clause 8.1 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
99.9% > actual service level > 99.0%	5% of monthly Charge for Access
actual service level < 99.0%	15% of monthly Charge for Access

- 8.3 Claims made pursuant to clause 8.2 above must be made within one calendar month of the month to which it relates, and will only be considered if they exceed £10.
- 8.4 Downtime must be reported by the Customer at the time of the Downtime to allow Vapour to reasonably fulfil its obligations under this clause 8.
- 8.5 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 Access service is restored as soon as reasonably practicable.

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)
Downtime	a period of time commencing when the Customer reports to Vapour via a support ticket to support@vapourmedia.co.uk that the Customer cannot access the Vapour Access 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
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 Storm (Radius)

Cloud Voice Solution

Vapour Media Limited

Vapour Storm Cloud 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 Storm 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 Storm 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 Storm 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 Storm 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 STORM VOICE SERVICES

- 2.1 Vapour shall provide the Vapour Storm 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 Storm 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 Storm Voice Services.
- 2.3 The Customer must take such steps as are reasonably necessary to ensure access to the Vapour Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm 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 Storm Voice Services are PCI DSS compliant, Vapour warrants that during the term of the Agreement the Vapour Storm Voice Services (or the relevant part of them) together with the systems used for the Vapour Storm 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 Storm 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 Storm Voice Services are not intended to be used for calls to emergency services. Vapour recommends that the Vapour Storm 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 Storm Voice Services. Any minimum spend in effect at the date on which the Vapour Storm 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 Storm 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 Storm Voice Services; and
 - 11.1.2 the date which is four weeks from the date on which the Vapour Storm 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.

12. SERVICE LEVEL AGREEMENT – CLOUD VOICE

- 12.1 Vapour will endeavour to ensure that the Customer is able to access the Cloud Voice service for at least 99.9% of the total hours in any calendar month.
- 12.2 If Vapour fails to meet the availability target contained in clause 12.1 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
	99.9% > actual service level > 99.0%	5% of monthly licence fee for the Cloud Voice
	actual service level < 99.0%	15% of monthly licence fee for the Cloud Voice
12.3	Claims made pursuant to clause 12.2 above must be made within one calendar month of the month to which it relates, and will only be considered if they exceed £10.	
12.4	Downtime must be reported by the Customer at the time of the Downtime to allow Vapour to reasonably fulfil its obligations under this clause 12.	
12.5	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 Voice service is restored as soon as reasonably practicable.	

Schedule Defined Terms

Customer Support Plan	the customer support plan in place between Vapour and the Customer for the Vapour Storm Voice Services from time to time
Downtime	a period of time commencing when the Customer reports to Vapour via a support ticket to support@vapourmedia.co.uk that the Customer cannot access the Vapour Storm Voice 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
Fair Use Policy	Vapour's policy regarding the fair use of the Vapour Storm 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 Storm 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 Storm 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 Avaya Cloud Voice Solution



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INTRODUCTION

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 Avaya Cloud Voice service.

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.

ABOUT THIS PRODUCT SCHEDULE

The terms set out in this Product Schedule are applicable to customers receiving the Vapour Avaya Cloud Voice Services. This will be indicated in the PAC.

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 Avaya Cloud 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 Avaya Cloud Voice Services.

A NOTE ON 'YOU'

'You' and 'your' mean you as the Customer.

A NOTE ON 'VAPOUR'

'Vapour' means Vapour Media Limited and its subcontractors BT Wholesale and Avaya.

Part A – The Service

1 SERVICE SUMMARY

Vapour will provide you with a non-exclusive, non-transferable, revocable right to access and use a Vapour hosted Avaya cloud based contact centre solution and Unified Communications service for use by you comprising:

- 1.1 the Standard Service Components; and
- 1.2 any of the Service Options as set out in any applicable Order, up to the point of the Service Management Boundary as set out in Paragraph 4 ("**ACS Select Service**").

2 STANDARD SERVICE COMPONENTS

Vapour will provide you, for your own use, all of the following standard service components ("**Standard Service Components**") in accordance with the details as set out in any applicable Order:

- 2.1 access to the ACS Select Service technology and Applications which provide:
 - 2.1.1 telephony and Unified Communications features and functionality; and
 - 2.1.2 the features and functionality to run an inbound, outbound or blended multi-channel contact centre;
- 2.2 connection to a SIP platform to carry voice Calls to and from Users over PSTN;
- 2.3 Etherway Access Circuits;
- 2.4 access to provisioning and incident management processes and systems;

Vapour Avaya Cloud Voice Solution - Product Schedule

- 2.5 access, as specified in the Product Handbook, for you, to the Service Portals, via a web browser if required, additional charges may apply. You would access the Service Portals via predefined URLs as set out in the Product Handbook;
- 2.6 mandatory training courses on sales, operations, and support of the ACS Select Service which includes the following:
 - 2.6.1 training for your nominated personnel on the dates to be agreed between both of us;
 - 2.6.2 provision of all training courses at either Vapour's premises or your premises as both of us agree. Vapour may charge you for reasonable costs of travel and accommodation if training is provided at your premises; and
 - 2.6.3 provision of relevant materials to attendees at the end of each mandatory technical training course;
- 2.7 the ability to integrate your or third party owned applications using the Application Programming Interface and procedures, and subject to any dependencies set out in the Product Handbook.
- 2.8 If you use the ACS Select Service you are considered the Customer for the purposes of interpreting the relevant provisions of this Schedule.

3 SERVICE OPTIONS

- 3.1 Vapour will provide you for your own use with any of the following options as set out in any applicable Order ("**Service Options**") and in accordance with the details set out in that Order:
 - 3.1.1 Professional Services;
 - 3.1.2 Numbering Services;
 - 3.1.3 Purchased Equipment;
 - 3.1.4 Hybrid Connect;
 - 3.1.5 Managed Network;
 - 3.1.6 Internet Only Access;
 - 3.1.7 Service Plan options;
 - 3.1.8 Intelligent Recording Service, as set out in Paragraph 3.4; and
 - 3.1.9 Secure Payments Service, as set out in Paragraph 3.3.
- 3.2 Service Options may not be available in all countries.
- 3.3 **Secure Payments Service**
 - 3.3.1 You will have provisioned the Standard Service Components prior to ordering the Secure Payments Service.
 - 3.3.2 Vapour will not have access to or visibility of the caller's payment details by virtue of providing the Secure Payments Service.
 - 3.3.3 For the Hosting Set Up Service Vapour will:
 - (a) configure your direct dial-In lines that are used in conjunction with the Secure Payments Service;
 - (b) define and set up the way in which you will invoke Secure Mode; and
 - (c) set up and configure the interfaces to your PSP.
 - 3.3.4 You will provide all the necessary details for successful completion of the Hosting Set Up Service.
 - 3.3.5 Vapour will configure the Secure Payments Service for a specified number of Secure Payments Service channels as set out in the applicable Order.
 - 3.3.6 If the PSP selected by you is one for which no interface into the Secure Payment Service already exists then Vapour may raise an additional Charge which will be payable by you for development of the new interface.
 - 3.3.7 Vapour will pass to the PSP the transaction details obtained when a Secure Payments Authorised User processes a transaction.
 - 3.3.8 Vapour will pass you the transaction reference and authorisation code for successful payments and the transaction reference and failure code for failed transactions obtained from the PSP.
 - 3.3.9 Unless agreed otherwise, Vapour will provide public, open APIs and you will integrate the Secure Payments Service into your relationship management systems in the correct format.
 - 3.3.10 Emergency calls are not supported when in Secure Mode.

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- 3.3.11 The rights granted under this Paragraph 3.3 are granted to you only in respect of your Secure Payments Service Authorised Users.
- 3.3.12 The Secure Payments Service will terminate immediately upon notice if you commit a breach of the terms set out in Paragraph 3.3.13 and, if capable of remedy, fails to remedy such breach within 14 days after being given notice to do so.
- 3.3.13 You will:
- (a) supervise and control the use of the Secure Payments Service in accordance with the terms of the Contract;
 - (b) not use the Secure Payments Service on behalf of or for the benefit of any third party, including use of the Secure Payments Service for the purpose of operating a bureau service;
 - (c) effect and maintain adequate security measures to safeguard the Secure Payments Service and prevent any unauthorised access to, or use of the Secure Payments Service;
 - (d) not access all or any part of the Secure Payments Service in order to build a product or service which competes with the Secure Payments Service; and
 - (e) not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Secure Payments Service available to any third party except the Secure Payments Service Authorised Users.
- 3.3.14 You will:
- (a) ensure that the number of Secure Payments Service channels used does not exceed the number of Secure Payments Service channels purchased;
 - (b) provide Vapour with all necessary co-operation in relation to the Contract;
 - (c) provide Vapour with all relevant information as may be required by Vapour to deliver the Secure Payment Service, including but not limited to security access information and configuration information;
 - (d) respond to queries about card payments; and
 - (e) be responsible for the content of your CRM Payments Pages which Secure Payments Authorised Users access when processing transactions.
- 3.3.15 You will reconfigure any Equipment connected to the Secure Payments Service or used in connection with the Secure Payment Service as required to use the Secure Payments Service.

3.4 **Intelligent Recording Service ("IR Service")**

- 3.4.1 Vapour will provide the IR Service as set out in the Product Handbook.
- 3.4.2 Vapour will only be able to provide the mobile recording feature of the IR Service if the Teleware airtime service is available and your mobile device is compatible with the Teleware airtime service.
- 3.4.3 IR Service Calls and data will be stored and accessible for the default retention period set out in the Product Handbook. If you do not select the IR Service archiving option your recordings will be removed on expiry of the default retention period.
- 3.4.4 If you want to retain the recordings after the default retention period, you will download and archive the recordings, as set out in the Product Handbook.
- 3.4.5 If you want to archive mobile voice recordings using an onsite call recorder, you will request the Intelligent Import Option, either on the CRF or via the Modify Order Process.
- 3.4.6 If you request either the Skype for Business (SfB) Recording Option or the IM Auditing Option, you will request this option either on the CRF or via the Modify Order Process. You will be required to provide, at your cost, a dedicated physical or virtual server in accordance with the specification set out in the Product Handbook or as otherwise defined by Vapour.
- 3.4.7 You will achieve and maintain any applicable compliance requirements related to the IR Service for your business.

4 **SERVICE MANAGEMENT BOUNDARY**

- 4.1 Vapour will provide and manage the ACS Select Service in accordance with Parts B and C of this Schedule and as set out in any applicable Order up to and including the applicable point of the ACS Select Service demarcation set out in Paragraphs 4.1.1 to 4.1.3 below ("**Service Management Boundary**").
- 4.1.1 Where you self-provide the Ethernet access the Service Management Boundary is the shared Etherway Access Circuits at each applicable Vapour data centre;

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- 4.1.2 Where you select the Managed Network Service Option, the Service Management Boundary is the LAN facing ports on the Vapour edge routers, which are Vapour Equipment to terminate the ACS Select Service at the Site(s); and
- 4.1.3 Where you select Internet Only Access, and for any elements of the ACS Select Service involving the use of the Internet, the Service Management Boundary is the Internet facing ports of the Vapour routers at the applicable Vapour data centre.
- 4.2 Vapour will have no responsibility for the ACS Select Service outside the Service Management Boundary.
- 4.3 Vapour does not make any representations, whether express or implied, about whether the ACS Select Service will operate in combination with any of your equipment or other equipment and software.
- 4.4 Vapour will not be responsible for:
 - 4.4.1 physical and logical access circuits, purchased by you under a separate agreement in order to access the ACS Select Service;
 - 4.4.2 yours, or the User's:
 - (a) local connectivity;
 - (b) PC or server hardware;
 - (c) operations systems or third party software;
 - (d) site network configuration;
 - (e) workstation software replacement, installation or Modifications;
 - (f) PBX or internal telephony;
 - (g) compliance with MiFID or any call recording related regulation, or any related processes; or
 - (h) PCI DSS compliance processes.
 - 4.4.3 ACS Select Service solution administration and configuration which includes creating or maintaining campaigns, users, groups, dial plans, routing strategies and codecs;
 - 4.4.4 administration and management of certain of the ACS Select Service Linux and Windows operating systems, as set out in the Product Handbook, including managing system back-ups, patches and updates;
 - 4.4.5 ACS Select Service dialler management and configuration;
 - 4.4.6 access to third party client portals or software; and
 - 4.4.7 any software outside the Service Management Boundary including, CRM systems, email, SMS or web chat, virus scanner, backup tools, archive storage and call loggers, or the integration of any such software with the ACS Select Service, unless otherwise agreed between Vapour and you.

5 ASSOCIATED SERVICES AND THIRD PARTIES

- 5.1 You will have the following services in place that will connect to the ACS Select Service or the Customer Service and are necessary for the ACS Select Service or Customer Service to function and will ensure that these components meet the minimum technical requirements that Vapour specifies:
 - 5.1.1 Internet connectivity;
 - 5.1.2 IP telephony end-points;
 - 5.1.3 personal computers or laptops meeting the minimum technical requirements set out in the Product Handbook;
 - 5.1.4 Internet browser meeting the minimum technical requirements set out in the Product Handbook;
 - 5.1.5 Call recording archiving beyond the storage included as part of the Standard Service Component, as set out in the Product Handbook;
 - 5.1.6 inbound services supplied and configured to support any non-geographical numbers;
 - 5.1.7 an appropriate access network, utilising either Internet connectivity as set out in Paragraph 5.1.1, the self-provide option as set out in Paragraph 4.1.1 or the Managed Network Service Option as set out in Paragraph 3.1.5 to connect you to their Customer Service, and any corresponding routers or switches to support the Customer Service with sufficient bandwidth to meet your VoIP and quality of service requirements and any interfaces to the Customer Service, all as further set out in the Product Handbook;
 - 5.1.8 appropriate Local Area Network infrastructure including any corresponding router or port switches suitable to deliver your requirements to Users;

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- 5.1.9 where your Site is outside the UK, a SIP Service Provider that meets the requirements set out in the Product Handbook or otherwise advised to you by Vapour in writing;
 - 5.1.10 in the case of the Secure Payments Service, contractual arrangements with a PSP; and
 - 5.1.11 in the case of the IR Service, Vapour will only provide the mobile recording feature of the IR Service to Users who have an airtime contract with Teleware,
- (each an “**Enabling Service**”).
- 5.2 If Vapour provides you with any services other than the ACS Select Service (including, but not limited to any Enabling Service) this Schedule will not apply to those services and those services will be governed by their separate terms.
 - 5.3 Vapour will not be liable for failure to or delay in supplying the ACS Select Service to a Site if a licenced operator delays or refuses the supply of an Access Line to that Site and no alternative service is available at reasonable cost.

6 EQUIPMENT

6.1 Use of Vapour Equipment and Purchased Equipment

In relation to Vapour Equipment, and until title in any Purchased Equipment transfers to you in accordance with Paragraph 6.3.4, you will:

- 6.1.1 keep the Vapour Equipment and Purchased Equipment safe and without risk to health;
- 6.1.2 only use the Vapour Equipment and Purchased Equipment, or allow it to be used, in accordance with any instructions or authorisation Vapour may give and for the purpose for which it is designed;
- 6.1.3 not move the Vapour Equipment or Purchased Equipment or any part of it from the Site(s) without Vapour’s written consent and you will pay Vapour’s costs and expenses reasonably incurred as a result of such move or relocation;
- 6.1.4 not make any alterations or attachments to, or otherwise interfere with, the Vapour Equipment or Purchased Equipment, nor permit any person (other than a person authorised by Vapour) to do so, without Vapour’s prior written consent and, if Vapour gives its consent, agree that any alterations or attachments are part of the Vapour Equipment or Purchased Equipment;
- 6.1.5 not sell, charge, assign, transfer or dispose of or part with possession of the Vapour Equipment or Purchased Equipment or any part of it;
- 6.1.6 not allow any lien, encumbrance or security interest over the Vapour Equipment or Purchased Equipment, nor pledge the credit of Vapour for the repair of the Vapour Equipment or Purchased Equipment or otherwise;
- 6.1.7 not claim to be owner of the Vapour Equipment or Purchased Equipment and ensure that the owner of the Site will not claim ownership of the Vapour Equipment or Purchased Equipment, even where the Vapour Equipment is fixed to the Site(s);
- 6.1.8 obtain appropriate insurance against any damage to or theft or loss of the Vapour Equipment or Purchased Equipment;
- 6.1.9 in addition to any other rights that Vapour may have, reimburse Vapour for any losses, costs or liabilities arising from your use or mis-use of the Vapour Equipment or Purchased Equipment or where the Vapour Equipment is damaged, stolen or lost, except where the loss or damage to Vapour Equipment or Purchased Equipment is a result of fair wear and tear or caused by Vapour;
- 6.1.10 ensure that the Vapour Equipment or Purchased Equipment appears in Vapour’s name in your accounting books;
- 6.1.11 where there is a threatened seizure of the Vapour Equipment or Purchased Equipment, or an Insolvency Event applies to you, immediately provide Vapour with Notice so that Vapour may take action to repossess the Vapour Equipment or Purchased Equipment; and
- 6.1.12 notify any interested third parties that Vapour owns the Vapour Equipment and Purchased Equipment.

6.2 Vapour Equipment

- 6.2.1 Vapour Equipment will remain Vapour’s property at all times and risk in Vapour Equipment will pass to you upon delivery to you, whether or not the Vapour Equipment has been installed.

6.3 Purchased Equipment

6.3.1 Ordering Purchased Equipment

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- (a) The process for ordering Purchased Equipment is set out in the Product Handbook.
- (b) Vapour may not always be able to fulfil an Order for Purchased Equipment even though the order form may show the equipment as being available to order.
- (c) Vapour may reject an Order for Purchased Equipment as set out in the Product Handbook.

6.3.2 Purchased Equipment Order Cancellation

- (a) You may cancel an Order for Purchased Equipment up to five Business Days before delivery of the Purchased Equipment. If the cancelled Order has a value of more than £3,000 you will pay Vapour a restocking fee of 10 per cent of the Order value.
- (b) Regardless of whether you have cancelled an Order in accordance with Paragraph 6.3.2(a), if any Purchased Equipment which has been cancelled is delivered, you will, at your cost, return the Purchased Equipment to Vapour in an as new condition, in its original packaging and will ensure that the seal on any Software is not broken.

6.3.3 Delivery Of Purchased Equipment

- (a) You will provide Vapour with the name and contact details of at least one individual who is responsible for receiving the Purchased Equipment at the Site(s).
- (b) Vapour will dispatch any Purchased Equipment for delivery to the applicable Site(s) as set out in any applicable Order, but Vapour will only deliver Purchased Equipment in the United Kingdom.
- (c) You will take delivery of and sign for the Purchased Equipment on delivery and will write on the delivery note if:
 - (i) the quantity of packages delivered is different to the quantity shown on the delivery note; or
 - (ii) there is any damage to the packages.
- (d) You will separately notify Vapour if the circumstances set out in Paragraph 6.3.3(c) occur.

6.3.4 Transfer of Title and Risk

- (a) Title in the Purchased Equipment (except for the Intellectual Property Rights) will pass to you when you have paid for the Purchased Equipment in full.
- (b) Where Vapour delivers the Purchased Equipment, risk will pass to you on delivery of the Purchased Equipment, but you will not be liable for any loss or damage that is caused by Vapour's negligence.
- (c) Where Vapour does not deliver the Purchased Equipment, risk will pass to you when you take possession of the Purchased Equipment.

6.3.5 Acceptance of Purchased Equipment

Vapour will treat the Purchased Equipment as accepted when you take delivery or possession of the Purchased Equipment.

6.3.6 Warranty

- (a) During the period of 12 consecutive months following the delivery date (or any other period that Vapour advises you in a Notice), if you report to Vapour in accordance with the process set out in the Product Handbook that there is an Incident in the Purchased Equipment due to faulty design, manufacture or materials, or Vapour's negligence, Vapour will, or will arrange for the manufacturer or other third party to, replace or (at Vapour's option) repair the part affected by, or causing, the Incident free of charge, unless:
 - (i) the Purchased Equipment has not been properly kept, used or maintained in accordance with the manufacturer's or Vapour's instructions, if any;
 - (ii) the Purchased Equipment has been modified without Vapour's written consent;
 - (iii) the Incident is due to damage, interference with or maintenance of Purchased Equipment by persons other than Vapour or a third party authorised by Vapour;
 - (iv) the Incident is due to faulty design by you where the Purchased Equipment has been customised or integrated into your systems to your design; or
 - (v) the Incident is due to fair wear and tear.
- (b) If requested by Vapour, you will return the Purchased Equipment affected by an Incident to Vapour or to the manufacturer or other third party, in accordance with Vapour's instructions, for repair or replacement in accordance with Paragraph 6.3.6(a).

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- (c) Vapour does not warrant that the Software supplied in accordance with the Contract is free from Incidents, but Vapour will remedy any defects that materially impair performance (where necessary, by arrangement between both of us) within a reasonable time.
- (d) Except where you have relied on Vapour's written advice, it is your responsibility to satisfy yourself that the Purchased Equipment is suitable for your needs.

6.3.7 Security

- (a) You will ensure the proper use of any User names, personal identification numbers and passwords used with the Purchased Equipment, and you will take all necessary steps to ensure that they are kept confidential, secure and not made available to unauthorised persons.
- (b) Vapour does not guarantee the security of the Purchased Equipment against unauthorised or unlawful access or use.

6.3.8 Software Licence

On and from the installation date of any Purchased Equipment, you will comply with the provision of any Software licences provided with or as part of any Purchased Equipment.

6.4 WEEE Directive

- 6.4.1 You are responsible under Article 13 of the Waste Electrical and Electronic Equipment Directive 2012 ("WEEE Directive") for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any equipment supplied under the Contract that has become waste electrical and electronic equipment ("WEEE").
- 6.4.2 For the purposes of Article 13 of the WEEE Directive this Paragraph 6.4 is an alternative arrangement to finance the collection, treatment, recovery, recycling and environmentally sound disposal of WEEE.
- 6.4.3 You will comply with any information recording or reporting obligations imposed by the WEEE Directive.

6.5 Consumer Regulations

Where you place an Order acting for purposes that are related to your trade, business or profession, this is a business to business transaction to which the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 do not apply.

6.6 Sale of Goods

The UN Convention on Contracts for the International Sale of Goods will not apply to the Contract.

7 SPECIFIC TERMS

7.1 Changes to the Contract

- 7.1.1 Vapour may amend the Charges for international termination rates in the Contract at any time by giving at least seven days' Notice before the change takes effect.
- 7.1.2 Vapour may amend the Contract at any time by giving at least 28 days' Notice before the change takes effect in order to:
 - (a) comply with any legal or regulatory obligation, except where Vapour's compliance with that legal or regulatory obligation requires a shorter period of Notice;
 - (b) change any of the Charges
 - (c) protect the use of the Vapour Corporate Mark;
 - (d) introduce new or improved Service Levels;
 - (e) introduce new ACS Select Service features;
 - (f) withdraw or change ACS Select Service features;
 - (g) introduce process changes or change the technical specification of the ACS Select Service including ACS Select Service upgrades, provided that they are not to your material detriment;
 - (h) maintain the integrity or security of the ACS Select Service or Vapour Network;
 - (i) change the processes and procedures described in the Documentation; or
 - (j) improve clarity, or make corrections to typographical errors,providing that the changes in Paragraphs 7.1.2(e) to 7.1.2(j) inclusive, will not unreasonably affect the ACS Select Service.
- 7.1.3 Vapour will not require the signature of a new contract for the changes set out in Paragraph 7.1.2 and the changes will take effect at the expiration of the Notice or as otherwise set out in Paragraph 7.1.2.

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- 7.1.4 Vapour may propose changes to the Contract at any time for matters not falling within Paragraphs 7.1.1 and 7.1.2 by giving you 28 days' written Notice before the date the changes are proposed to take effect ("**Notice to Amend**").
- 7.1.5 Within 14 days of any Notice to Amend, you will provide Vapour Notice:
- (a) agreeing to the changes Vapour proposed, in which case those changes will apply from the proposed effective date; or
 - (b) requesting revisions to the changes Vapour proposed, in which case both of us will enter into good faith negotiations and, if agreement is reached, the agreed changes will apply from the proposed effective date or any other date as may be agreed between both of us.
- 7.1.6 If we have not reached agreement in accordance with Paragraph 7.1.5(b) within 14 days either of us may terminate the Contract or ACS Select Service or any part of the ACS Select Service by giving the other 28 days' Notice of termination.
- 7.1.7 If:
- (a) you do not serve a Notice within the period set out in Paragraph 7.1.5; or
 - (b) both of us have not reached agreement within 14 days of your Notice under Paragraph 7.1.5(b) and neither of us has terminated the Contract or ACS Select Service or any part of the ACS Select Service in accordance with Paragraph 7.1.6,
- you will be treated as having accepted the changes and the changes will take effect from the proposed effective date.

7.2 Minimum Period of Service

- 7.2.1 At the end of the Minimum Period of Service, unless one of us gives Notice to the other of an intention to terminate the ACS Select Service at least 180 days' before the end of the Minimum Period of Service both of us will continue to perform each of our obligations in accordance with the Contract.
- 7.2.2 If you request a change to a Customer Service which requires:
- (a) the addition of an IP Office only or an IP Office and ACCS service to an existing Hybrid Connect Only Service;
 - (b) the addition of ACCS to an existing IP Office only service;
 - (c) the addition of the Managed Network Service Option to an existing Internet Only Access or self-provide option; or
 - (d) a change to a higher Service Plan,
- then the Minimum Period of Service will recommence from the Service Start Date of the change as notified by Vapour.

7.3 Termination for Convenience

- 7.3.1 Either of us may, at any time after the Effective Date and without cause, terminate the Contract, any Customer Service or any Order by giving 180 days' Notice to the other subject to the payment of applicable Termination charges.

7.4 Customer Committed Date

- 7.4.1 If you request a change to the ACS Select Service or any part of the ACS Select Service, including any Purchased Equipment or any IP Address location, then Vapour may revise the Customer Committed Date to accommodate that change.
- 7.4.2 Vapour may expedite delivery of the ACS Select Service for operational reasons or in response to a request from you, but this will not revise the Customer Committed Date.

7.5 Access to Emergency Services

- 7.5.1 Emergency Calls Access will only be available where the Emergency Call originates from a calling party located in the UK having a telephone number conforming to the National Telephone Numbering Plan and being either from a geographic number range or from non-geographic number ranges with a prefix of: 055, 056, 03 or 08.
- 7.5.2 Vapour will give you not less than two months' Notice of any material change to Emergency Calls Access.
- 7.5.3 Vapour will provide the ability for you and Users to call the emergency services by dialling "999" or "112", but caller location information will only be provided by Vapour if you:
- (a) inform Vapour of the geographic location of calling numbers to enable Vapour to maintain a database of calling numbers and geographic locations;

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- (b) inform Vapour immediately of any changes to those locations; and
 - (c) configure your PBX to accurately convey correct calling number locations.
- 7.5.4 You will provide Vapour with accurate Customer and User records which you will keep updated. The records you will provide Vapour will include:
 - (a) a telephone number that may be used to call you;
 - (b) a contact name;
 - (c) the post code for each telephone number; and
 - (d) for Users with nomadic applications that use more than one network termination point or equivalent, the post code where the number is normally used.
- 7.5.5 You will inform your Users of the limitations of Emergency Calls Access, including the following:
 - (a) that the equipment they use to access the Customer Service requires mains power to make Emergency Calls;
 - (b) that they are required to confirm or provide their location when making an Emergency Call to enable the correct emergency organisation to respond;
 - (c) that an Emergency Call made using the Customer Service may not receive the same network priority as an Emergency Call made on a mobile network or on a circuit-switched fixed line; and
 - (d) that it is recommended that they have at least one PSTN line as a back-up to the Customer Service at each Customer Site.
- 7.5.6 You will:
 - (a) handle, process and reply to all enquiries and complaints received from Vapour in relation to Emergency Calls in a timely manner; and
 - (b) assist Vapour as required, in relation to any queries received regarding Emergency Calls Access.
- 7.5.7 Failure by you to comply with Paragraphs 7.5.4 to 7.5.6 inclusive will be a material breach of the Contract.

7.6 **EULA**

- 7.6.1 If any Avaya Software (or portion of it) provided under the Contract is installed or downloaded at your Site or on any of your devices or otherwise made available or accessible by you, Vapour will only provide the ACS Select Service if you have entered into an end user licence agreement.
- 7.6.2 By accepting the terms of the EULA, you agree to observe and comply with it for any and all use of the ACS Select Service.
- 7.6.3 If you do not comply with or observe the EULA, Vapour may restrict or suspend the ACS Select Service or Customer Service upon reasonable Notice, and:
 - (a) you will pay the Charges that are payable for the ACS Select Service until the ACS Select Service ends; and
 - (b) Vapour may charge a re-installation fee to start the ACS Select Service again.
- 7.6.4 You will accept responsibility in accordance with the terms of the EULA for the use of the Avaya Software.
- 7.6.5 You will enter into the EULA for your and your Customer's own benefit and the rights, obligations, acknowledgements, undertakings, warranties and indemnities granted in accordance with the EULA will be between you and the Supplier.
- 7.6.6 You will deal with the Supplier with respect to any loss or damage suffered by you, your Customer or the Supplier under the EULA and such loss or damage will not be enforceable against Vapour.
- 7.6.7 You warrant that where Avaya Software is made available by you to your Customer you will flow down the terms of the EULA for that Software to your Customer and secure their written agreement to the EULA without amendment.
- 7.6.8 You will enforce your Customer agreements as they relate to Avaya Software, including any documentation relating to the Avaya Software.

7.7 **IP Addresses, Domain Names and Telephone Numbers**

- 7.7.1 Except for IP Addresses expressly registered in your name, all IP Addresses and Domain Names made available with the ACS Select Service will at all times remain Vapour's property or the property of its suppliers and will be non-transferable.

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- 7.7.2 All of your rights to use IP Addresses or Domain Names will cease on termination of the ACS Select Service.
- 7.7.3 You will not own any telephone number related to the ACS Select Service and, apart from your right to Number Portability where you change Communications Provider, all your rights to use telephone numbers will cease on termination of the ACS Select Service.
- 7.7.4 Vapour will be responsible for the procurement and management of the relevant URLs on behalf of you and your Customer.

7.8 Provider Independent Resources

- 7.8.1 Where you receive Provider Independent Resources (PIR) with the ACS Select Service:
 - (a) you will respond to any information requests from Vapour in order for Vapour to keep registration records up-to-date;
 - (b) you will ensure that up-to-date registration data is provided to Vapour and you agree and agrees, that some or all of this registration data is published in the RIPE WHOIS database;
 - (c) you will not assign any of the PIR to a third party;
 - (d) you will pay any registration fees to Vapour that apply for the PIR;
 - (e) if you cannot be contacted or you do not pay any applicable registration fees to Vapour, the PIR will return by default to RIPE;
 - (f) your and your Customer's use of PIR is subject to the RIPE Policies; and
 - (g) if you do not follow any of the relevant RIPE Policies the PIR will return to RIPE and Vapour may terminate the Contract in accordance with Clause 19 of the General Terms for Resellers.

7.9 Invoicing

- 7.9.1 Vapour will invoice you for the following Charges in the amounts set out in any applicable Order.

7.9.2 Call Charges:

Where Calls are provided by Vapour:

- (a) Outgoing Call Charges and transfer Call Charges will be payable at the rates advised by Vapour to you from time to time;
- (b) In addition to the Charges, you shall be responsible for any costs incurred by the use of the Services and charged to Vapour by a network operator, service provider or other body, including any costs incurred as a result of unauthorised or any fraudulent use of the Service.
- (c) the Call Charges will apply from the time you first make a Call;
- (d) the Call Charges will be invoiced monthly in arrears, subject to Vapour's Policy for Credit Vetting;
- (e) you will pay all Call Charges whether made by yourself or other party;
- (f) where a Call extends over one or more charging periods the Call duration will be apportioned to the relevant charging period and invoiced accordingly;
- (g) charging for a Call will commence from when an answer signal is received indicating the media path is complete and cease when a release signal is received indicating that the Call has been disconnected;
- (h) Calls are charged on a per second basis rounded up to the nearest second with the exception of minimum or fixed fee Calls;
- (i) where an Outgoing Call is made to an 0800, 0808 or 0500 free phone number it will be free of charge to you;
- (j) where an Incoming Call is made from a payphone managed by BT or a public payphone or equivalent payphone on the BT Network of another CP to an 0800, 0808 or 0500 free phone number belonging to you, either allocated or ported to the ACS Select Service, the applicable payphone access Charge will be payable by you as set out in:
 - (i) Section B1.09 of the Carrier Price List; or
 - (ii) the relevant regulated payphone access Charge in the CP's price list; and
- (k) Internal Calls will be free of charge to the caller.

7.9.3 Additional Charges

Vapour may invoice you for any of the following Charges in addition to those set out in any applicable Order:

- (a) Charges for investigating Incidents that you report to Vapour where Vapour finds no Incident or that the Incident is caused by something for which Vapour is not responsible under the Contract;

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- (b) Charges for expediting provision of the ACS Select Service at your request after Vapour has informed you of the Customer Committed Date;
- (c) any other Charges set out in any applicable Order or as otherwise agreed between both of us; and
- (d) If you request any training for you which is in addition to the mandatory training, including training new employees, then Vapour will apply the additional training Charge.
- (e) Vapour's reasonable travel and accommodation costs in relation to any training provided at your Customer's Site; and
- (f) Charges for responding to any queries in relation to Severity 4 Incident which are not directly related to Service Portals or Order placement; and
- (g) Vapour will not charge for a Call where a Call is not successfully conveyed because:
 - (i) the Call is not answered by the dialled number;
 - (ii) the dialled number is engaged; or
 - (iii) the dialled number is not available.

7.9.4 Where the Customer purchases a "voice bundle", the following provisions shall apply:

- (a) where the bundle includes a set number of minutes, the voice bundle shall cover all Included Calls, up to the number of minutes included;
- (b) where the bundle allows unlimited calls, the voice bundle shall cover all Included Calls, subject to Vapour's Fair Use Policy;
- (c) any calls which are:
 - (i) Included Calls in excess of the number of minutes included within the bundle;
 - (ii) Included Calls made contrary to Vapour's Fair Use Policy; or
 - (iii) not Included Calls,
 will be charged based on Vapour's standard rate card unless otherwise agreed;
- (d) the Charge for the bundle will be payable monthly in advance, with any calls outside the bundle chargeable monthly in arrears;
- (e) bundled minutes will not roll over from month to month and any unused minutes will be forfeited; and
- (f) the Customer may supplement its bundle by purchasing:
 - (i) 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
 - (ii) top-ups, which add additional minutes on a one-off basis for a particular month for a fixed cost.

7.10 Credit Vetting

7.10.1 You are subject to Vapour's Policy for Credit Vetting and security deposits.

7.10.2 You will provide any deposit or guarantee required, immediately upon receiving notice from Vapour and, if you do not, Vapour may refuse to accept any Orders for the ACS Select Service or Customer Service until such deposit or guarantee is provided.

7.11 Charges at the End of a Customer Service or the Contract

7.11.1 If you terminate the Contract, the ACS Select Service, any Customer Service or any applicable Order, for convenience, you will pay Vapour:

- (a) all outstanding Charges for ACS Select Service or Customer Service rendered;
- (b) any remaining Charges outstanding with regard to Vapour Equipment or Purchased Equipment;
- (c) any waived installation Charges for the ACS Select Service or Customer Service being terminated;
- (d) any other Charges as set out in any applicable Order;
- (e) any charges reasonably incurred by Vapour from a supplier as a result of the early termination; and
- (f) any additional amounts due under the Contract.

7.11.2 In addition to the Charges set out in Paragraph 7.11.1 above, if you terminate during the Minimum Period of Service you will pay Vapour Termination Charges, as compensation, equal to:

- (a) 100 per cent of the charges that would have been payable up to the end of the Minimum Period of Service;
- (b) the number of terminated Voice Channels multiplied by the applicable Voice Channel Charge.

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- (c) for Service Options deployed at the time of termination, the applicable volume of your Voice Channels or Users multiplied by the applicable monthly Charges applying at the time of termination,

for each complete calendar month remaining to the end of the applicable Minimum Period of Service

7.12 TUPE Regulations

- 7.12.1 Both of us agree that each of us do not intend for the commencement of all or part of the ACS Select Services under the Contract to constitute a relevant transfer for the purposes of the TUPE Regulations.
- 7.12.2 You agree to indemnify Vapour and keep Vapour indemnified against any Liabilities arising out of or in connection with any Claim or decision by a court or tribunal that the contract of employment of any Staff has transferred to Vapour under the TUPE Regulations or otherwise as a result of both of us entering into the Contract, including any liability for failure to inform and consult under the TUPE Regulations.
- 7.12.3 If any contract of employment of any Staff has effect (or is argued to have effect) as if originally made between Vapour and those Staff as a result of the TUPE Regulations or otherwise at any time, then Vapour may, on becoming aware of that effect (or argued effect):
 - (a) terminate the contract of employment of that Staff and you agree to indemnify Vapour against any Liabilities arising out of such termination and against any sum payable to or in respect of such Staff prior to termination of employment; or
 - (b) continue to employ that Staff, in which case, you agree to indemnify Vapour against any Employment Costs of continuing to employ such Staff. Your liability under this Paragraph 7.12.3(b) is capped at a maximum of 12 months' Employment Costs.
- 7.12.4 The indemnities in Paragraphs 7.12.2 and 7.12.3(a) are not subject to the limitation of liability set out in Clause 23 of the General Terms for Resellers.

7.13 Intellectual Property Rights

- 7.13.1 Both of us agree that any Customer configuration data created by you and stored on the ACS Select Service will be your property, and nothing in the Contract will be deemed to confer any assignment or licence of the Intellectual Property Rights in that data to Vapour or any third party.

7.14 Content

- 7.14.1 Where you provide Content for use in connection with the ACS Select Service, you warrant that you have obtained in writing all necessary rights, clearances and permissions to allow you to use the Content including but not limited to any associated copying, storage, streaming or playing of the Content.
- 7.14.2 You will obtain any necessary licenses from the Performing Rights Society ("**PRS**") Mechanical Copyright Protection Society ("**MCPS**"), Phonographic Performance Limited ("**PPL**") or any other copyright holder and pay any applicable royalties or other charges to use any Content with the ACS Select Service.
- 7.14.3 If the Content provided by you is the subject of a claim of infringement of any Intellectual Property Rights or breach of any licensing requirement or if Vapour reasonably believes that the Content is likely to become the subject of such a claim Vapour may, without notice, delete the Content or disable the streaming or playing of the Content.
- 7.14.4 You will indemnify Vapour against any Claim arising from any breach of Paragraphs 7.14.1 or 7.14.2.

7.15 Documentation

- 7.15.1 Vapour grants you non-exclusive, world-wide rights to make adaptations of and copy and disclose such adaptations of the Documentation, excluding Supplier branded Documentation, for your and, where not otherwise expressly restricted, your Customers' use of the Customer Service.

7.16 New Number Allocations

- 7.16.1 Where Calls are provided by Vapour:
 - (a) you may request new geographic number ranges be allocated as part of the ACS Select Service. Vapour will allocate geographic numbers to you in accordance with the Product Handbook;
 - (b) Vapour will not, in one Order, allocate blocks of more than 100 consecutive numbers to you;
 - (c) Vapour will allocate a new number to you for an initial period of six months. If you do not use the number within this time, Vapour will take back the number and hold it for a period of three months before making it available for re-allocation;

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- (d) Vapour will revoke any newly allocated number range on reasonable notice where you are not, in Vapour's reasonable opinion, actively making use of such numbers; and
- (e) you will provide Vapour with information regarding the use of newly allocated numbers as Vapour reasonably requests.

7.17 Presentation Numbers

7.17.1 Where Calls are provided by Vapour:

- (a) you may request the use of Type 3 and Type 5 Presentation Numbers with the ACS Select Service as further described in the Product Handbook;
- (b) you will ensure that the telephone numbers that you submit to Vapour for use as Presentation Numbers:
 - (i) are allocated to you and that permission is not required from anyone else for you to use the numbers or, if not allocated to you, provide Vapour with evidence of written consent from the allocated owner for its use as a Presentation Number. You will advise Vapour immediately if that consent is withdrawn;
 - (ii) are diallable numbers or are numbers that have been received from the PSTN and passed on unchanged in accordance with the CLI Code of Practice;
 - (iii) are not Premium Rate Service numbers; and
 - (iv) do not connect to a revenue sharing number that generates an excessive or unexpected Call Charge.
- (c) Vapour may suspend or withdraw the use of a Presentation Number without notice if:
 - (i) it is found that the information you supplied was, or has become, inaccurate;
 - (ii) Vapour reasonably believes that the number is being used in a way prohibited by the CLI Code of Practice; or
 - (iii) Vapour reasonably believes that the number is being used in breach of Paragraph 7.17.1(b).
- (d) You will indemnify Vapour against all Claims arising from your failure to comply with Paragraph 7.17.1(b).

7.18 Service Constraints

- 7.18.1 The ACS Select Service does not support conveyance of Calls to all International Destination Networks.
- 7.18.2 If Calls carried on the ACS Select Service for onward termination to an International Destination Network are abnormally high, Vapour or the overseas network operator may apply network management control measures.
- 7.18.3 The ACS Select Service will not support certain Call types as set out in the Product Handbook.
- 7.18.4 The ACS Select Service will provide capacity to store recorded Calls as set out in the Product Handbook, beyond which you will provide and manage storage for Call recordings. The procedure for integrating Call recording storage with the ACS Select Service is set out in the Product Handbook.
- 7.18.5 The IP Office Application does not encrypt the storage of messaging such as voicemail, call recordings and e-chats. You will ensure that the Service meets your data security requirements.

7.19 Security of the Service

- 7.19.1 Vapour will not guarantee the security of the ACS Select Service against unauthorised or unlawful access or use.
- 7.19.2 Use of the ACS Select Service carries security risks to your systems and networks and the systems and networks of your Customers, Vapour and third parties including:
 - (a) misuse;
 - (b) unauthorised access;
 - (c) alterations;
 - (d) theft;
 - (e) fraud;
 - (f) destruction;
 - (g) corruption; and
 - (h) attacks,(“Occurrences”).

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- 7.19.3 You will, and will, follow Vapour's reasonable instructions to protect the security of the ACS Select Service or Customer Service and implement security measures following industry best practice at yours or your Customer's expense, including the use of:
- (a) firewalls;
 - (b) passwords;
 - (c) access restrictions;
 - (d) encryption;
 - (e) policies;
 - (f) physical access restrictions; and
 - (g) application of software updates including hotfixes and security patches,
- to protect the Service or Customer Service from Occurrences.
- 7.19.4 You will ensure that any Customer Equipment that is connected to the ACS Select Service or that you use, directly or indirectly, in relation to the ACS Select Service or the Customer Service is adequately protected against viruses and other breaches of security.
- 7.19.5 You will be provided with password protected access to Applications and operating systems. You will take all reasonable steps, including testing with the latest commercially available virus detection software, to ensure these Applications and operating systems are not infected by viruses or logic bombs, worms, Trojan horses and any other type of disruptive, destructive or nuisance programs.
- 7.19.6 You will install anti-virus Software onto ACCS Windows servers, in accordance with Vapour's instructions and maintain such anti-virus protection at the level recommended by the providers of such software.
- 7.19.7 You may provide your Customer with password protected access to Applications. You take all reasonable steps, including testing with the latest commercially available virus detection software, to ensure these Applications are not infected by viruses or logic bombs, worms, Trojan horses and any other type of disruptive, destructive or nuisance programs.
- 7.19.8 You will not delegate access to operating systems to your Customer without obtaining prior Vapour's written permission.
- 7.19.9 Any misuse of access to Applications and operating systems by you, or any of your Customers or Users, in order to attack or probe Vapour or other networks or services will be considered a material breach of the Contract.
- 7.19.10 You will ensure the security and proper use of all valid User access profiles, passwords and other systems administration information used in connection with the ACS Select Service or Customer Service and:
- (a) immediately terminate access for any person who is no longer a User;
 - (b) inform Vapour immediately if a User's ID or password has, or is likely to, become known to an unauthorised person, or is being or may be used in an unauthorised way;
 - (c) take all reasonable steps to prevent unauthorised access to the ACS Select Service or Customer Service;
 - (d) satisfy Vapour's security checks if a password is lost or forgotten;
 - (e) establish and manage a process for changing all passwords at least every 90 days;
 - (f) not change or attempt to change a Super Administrator's user ID; and
 - (g) change any or all passwords or other systems administration information used in connection with the ACS Select Service or Customer Service if Vapour requests you to do so in order to ensure the security or integrity of the ACS Select Service or Customer Service.
- 7.19.11 In the event of a security breach affecting the ACS Select Service or Customer Service, Vapour may require you to change any or all of your or your Customer's passwords.
- 7.20 PCI DSS Compliance Obligations**
- 7.20.1 ACS Select Service and Customer Service**
- (a) The ACS Select Service or Customer Service is not compliant with PCI DSS nor is it designed or intended to be and you will not use the ACS Select Service or Customer Service, as applicable, for the processing, storage or transmission of any cardholder data or any data that is subject to PCI DSS.
 - (b) In the event that you stores, processes or transmits data that is subject to PCI DSS you will indemnify Vapour for any Claims, costs or liabilities that Vapour incurs as a result.
- 7.20.2 Secure Payments Service**

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- (a) Vapour will ensure the security of Cardholder Data that Vapour processes or otherwise stores, processes or transmits on behalf of you in the provision of the Secure Payments Service in line with PCI DSS.
- (b) Vapour will not be responsible for the compliance of any other element or service outside of the Secure Payments Service, Service Management Boundary with PCI DSS.
- (c) You will only resell the Secure Payments Service to Customers who are Merchants, as defined by PCI DSS.
- (d) You will indemnify Vapour for any Claims, costs or liabilities that Vapour incurs as a result of your or your Customer's failure to comply with this Paragraph 7.22.2.

7.21 Notices

In addition to the provisions of Clause 25 of the General Terms for Resellers, Vapour may provide Notices under the Contract using the briefing system on the Vapour Website.

7.22 Service Amendment

- 7.22.1 You will request the Modification, cessation of or the addition of features or Profile, or other changes to the ACS Select Service by following the Modify Order Process set out in the Product Handbook.
- 7.22.2 Modification of an element of the ACS Select Service is only possible where a Modify Order Process for that element is set out in the Product Handbook.
- 7.22.3 You will request all other changes to the ACS Select Service by completing and submitting a request via the Service Desk, in accordance with the process set out in the Product Handbook.

7.23 Service Start Date

- 7.23.1 "**Service Start Date**" means for each Service, the date on which each Service is first made available to you.

Part B – Service Delivery and Management**8 VAPOUR OBLIGATIONS****8.1 Service Delivery**

Before the Service Start Date and, where applicable, throughout the provision of the ACS Select Service, Vapour will:

- 8.1.1 provide you with contact details for the Service Desk;
- 8.1.2 comply with all reasonable health and safety rules and regulations and reasonable security requirements that apply at the Site(s) and which you have notified to Vapour in writing, but Vapour will not be liable if, as a result of any such compliance, Vapour is in breach of any of its obligations under the Contract;
- 8.1.3 provide you with a Customer Committed Date and will use reasonable endeavours to meet any Customer Committed Date;
- 8.1.4 set up the ACS Select Service to enable you to commission your Customer on it;
- 8.1.5 provide you with copies of and provide access to if held on a web interface, the Documentation, manuals and other documentation necessary for you to access and use the ACS Select Service as contemplated by the Contract; and
- 8.1.6 reject an Order if any information you submit is illegible, inaccurate, incomplete or incorrect.

8.2 Commissioning of the ACS Select Service

On the Service Start Date, Vapour will;

- 8.2.1 provide you with a handover document as set out in the Product Handbook to enable you to commission the Customer Service for your Customer; and
- 8.2.2 advise you that the ACS Select Service is ready for you to commission for your Customer and confirm to you that the ACS Select Service is available for performance of any Acceptance Tests as set out in Paragraph 9.5.

8.3 During Operation

On and from the Service Start Date, Vapour will:

- 8.3.1 respond and use reasonable endeavours to remedy an Incident without undue delay and in accordance with the Service Levels in Part C of the Contract if Vapour detects or if you report an Incident with the ACS Select Service;
- 8.3.2 from time to time monitor the profile of Calls made and received using the ACS Select Service for potential fraudulent or bad faith use and may in the event of such Calls significantly affecting the ACS Select Service take reasonable steps to prevent such use. Vapour will not monitor the ACS Select Service without your prior permission;
- 8.3.3 comply with all Number Portability requests including number import and number export;
- 8.3.4 manage the porting of all numbers to be used in connection with the Customer Service in compliance with all relevant legislation and regulations, including codes of practice;
- 8.3.5 use reasonable endeavours to provide you with advance notice of any scheduled downtime;
- 8.3.6 use reasonable endeavours to keep all scheduled downtime to the quietest time of the ACS Select Service; and
- 8.3.7 occasionally suspend the ACS Select Service for operational reasons, such as Maintenance or ACS Select Service upgrades, or because of an Emergency, but before doing so will give you as much notice as reasonably practicable and whenever practicable will agree with you, when the ACS Select Service will be suspended.

8.4 The End of the Customer Service

On termination of a Customer Service by either one of us Vapour:

- 8.4.1 will de-activate the Customer Service on the date that Vapour agrees with you;
- 8.4.2 will leave the Tenant accessible for 30 days after the date Vapour de-activates the Customer Service, to enable you to retrieve information such as reporting and Call recordings. After this time access will no longer be possible, and all data will be deleted and no longer retrievable;
- 8.4.3 may disconnect and remove any Vapour Equipment located at the Site(s); and

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8.4.4 will, if requested by you, agree an exit plan to enable your Customer to transition to another supplier of the ACS Select Service.

8.5 The End of the Contract

On termination of the Contract by either one of us, Vapour will terminate all Customer Services and deactivate your access to all Portals.

9 YOUR OBLIGATIONS

9.1 Service Establishment Process

9.1.1 Vapour may reject a Order if any information submitted is inaccurate, incomplete or incorrect.

9.1.2 You will complete and maintain the direct debit mandate.

9.2 Ordering the Service

9.2.1 You will ensure that the information provided in the Order is accurate, correct and complete.

9.2.2 If, in Vapour's reasonable opinion, an Incident results from your failure to comply with Paragraph 9.2.1, the Service Levels set out in this Schedule will not apply.

9.2.3 Vapour will aim to advise you by email within three Business Days of receipt of your Order whether Vapour has accepted it.

9.3 Order Cancellation Prior to the Service Start Date

You will not be able to amend or cancel an Order before the Service Start Date if it has been accepted by Vapour as set out in Paragraph 9.2.3.

9.4 Service Delivery

Before the Service Start Date and, where applicable, throughout the provision of the Service by Vapour, you will:

9.4.1 provide Vapour with any information reasonably required without undue delay;

9.4.2 provide Vapour with access to any Site(s) during Business Hours, or as otherwise agreed, to enable Vapour to set up, deliver and manage the ACS Select Service;

9.4.3 complete any preparation activities that Vapour may request to enable you to receive the ACS Select Service or Customer Service promptly and in accordance with any reasonable timescales;

9.4.4 provide Vapour with Notice of any health and safety rules and regulations and security requirements that apply at the Site(s);

9.4.5 prepare and maintain the Site(s) for the installation of Vapour Equipment and Purchased Equipment and supply of the ACS Select Service;

9.4.6 provide a suitable and safe working environment for Vapour employees and anyone acting on Vapour's behalf at the Site;

9.4.7 ensure that the WAN and LAN protocols, applications and Customer Equipment that your Customers use are compatible with the Customer Service;

9.4.8 ensure that the bandwidth and volume of each Profile stated in any Order is sufficient to meet your requirements, notwithstanding any guidance Vapour may provide;

9.4.9 appoint a Super Administrator;

9.4.10 ensure that:

(a) where Vapour is providing training, you have the Customer Equipment available;

(b) your appropriate nominated personnel attend the training courses; and

(c) you give a minimum of seven Business Days' Notice to Vapour of any change or cancellation of dates agreed for training. Your failure to provide such Notice will result in you being charged at the additional training day rates.

9.5 Acceptance Tests

9.5.1 You will carry out the Acceptance Tests for the Customer Service within ten Business Days after receiving Notice from Vapour in accordance with Paragraph 8.2 ("**Acceptance Test Period**").

9.5.2 The Customer Service is accepted by you if you confirm acceptance in writing during the Acceptance Test Period or is treated as being accepted by you if you do not provide Vapour with Notice to the contrary by the end of the Acceptance Test Period.

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- 9.5.3 Regardless of what Paragraph 9.5.4 says, the ACS Select Service Start Date will be the date on which a Customer Service is first made available to you.
- 9.5.4 If, during the Acceptance Test Period, you provide Vapour Notice that the Acceptance Tests have not been passed, Vapour will remedy the non-conformance without undue delay and provide you Notice that Vapour has remedied the non-conformance.

9.6 During Operation

On and from the Service Start Date you will:

- 9.6.1 maintain a list of current Administrators and Users and immediately terminate access for any person who ceases to be an authorised Administrator or User;
- 9.6.2 configure Users for any Application via the Service Portals;
- 9.6.3 manage your Customer and User level configuration changes via the Service Portals, as set out in the Product Handbook;
- 9.6.4 manage all outage notifications, including Vapour outage notifications, with your Customers;
- 9.6.5 undertake all system back-ups and implementation of Service Patches, Service updates and upgrades to the ACS Select Service or Customer Service, in accordance with the process set out in the Product Handbook, instructions provided by Vapour from time to time and in accordance with industry best practice. Vapour is not responsible for any Incidents with the ACS Select Service or Customer Service resulting from your failure to comply with this Paragraph 9.6.5;
- 9.6.6 ensure Microsoft and Linux security patching is checked and updated where applicable following each Service Start Date and is updated promptly following commissioning of the Customer Service, in accordance with Vapour's instructions;
- 9.6.7 ensure all relevant security protection, as set out in Paragraph 7.19 is re-established after any upgrades or Service Pack installations, in accordance with Vapour's recommendations;
- 9.6.8 provide Vapour with a minimum of 48 hours' notice of any planned changes in your or your Customers' network environment that may impact the ACS Select Service or Customer Service;
- 9.6.9 immediately inform Vapour's nominated contact in writing of any changes to the information you supplied when registering for the ACS Select Service or Customer Service;
- 9.6.10 ensure that your Customers and Users report Incidents to you and not to the Service Desk;
- 9.6.11 deploy and configure Customer Equipment or Purchased Equipment for your Customer;
- 9.6.12 monitor and maintain any Customer Equipment connected to the Customer Service or used in connection with a Customer Service;
- 9.6.13 and will, ensure that any Customer Equipment that is connected to the ACS Select Service or Customer Service or that you use, directly or indirectly, in relation to the Service or Customer Service is:
 - (a) connected in accordance with the procedures set out in the Product Handbook;
 - (b) technically compatible with the ACS Select Service or Customer Service and will not harm or damage Vapour Equipment, the Vapour Network, or any of Vapour's supplier's or subcontractor's network or equipment or any other equipment; and
 - (c) approved and used in accordance with relevant instructions, standards and Applicable Law and any safety and security procedures applicable to the use of that Customer Equipment;
- 9.6.14 immediately disconnect any Customer Equipment or require your Customer to disconnect any of their Customer Equipment, where such Customer Equipment does not meet any relevant instructions, standards or Applicable Law;
- 9.6.15 procure that your Customer will ensure that all reasonable steps are taken to configure any Customer Equipment to prevent its being used in the commission of criminal offences including the making of fraudulent or bad faith Calls;
- 9.6.16 if Vapour gives you instructions which Vapour believes necessary for reasons of health, safety or the quality of the ACS Select Service or Customer Service or the quality of any other telecommunications services Vapour provides to you or any other customer, communicate these to you as soon as reasonably practicable;
- 9.6.17 comply with all relevant legislation and regulation (including codes of practice) regarding Number Portability including Number portability requests relating to number import and number export. Vapour will not port a telephone number where you have not complied with this Paragraph 9.6.17;

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- 9.6.18 acknowledge that there may be some restrictions to Number Portability as set out in the Product Handbook;
- 9.6.19 ensure that you comply with the requirements of all relevant legislation and regulations including:
 - (a) the Telephone Preference Service;
 - (b) the CLI Code of Practice;
 - (c) the UK Advertising Codes which are available on the Committee of Advertising Practice website; and
 - (d) any relevant Ofcom guidance on 'miss-selling' or 'slamming';
- 9.6.20 ensure that you have in place at all times processes:
 - (a) to monitor and enforce your compliance with the requirements set out in Paragraph 9.6.19; and
 - (b) to receive and take prompt and effective action on complaints from Vapour or parties who are authorised to enforce compliance with Paragraph 9.6.19;
- 9.6.21 monitor the profile of Calls made and received using the Customer Service for potential fraudulent or bad faith use and take reasonable steps to prevent such use; and
- 9.6.22 in the case of the Secure Payments Service Option you will provide the signature of the Semafone One-Way Non-Disclosure Agreement, as may be amended or supplemented by Semafone from time to time, by themselves or any contractor prior to them or any such contractor undertaking any integration work between any Semafone software and your Customer's environment.

9.7 End of Customer Service

- 9.7.1 On termination of any Customer Service by either one of us, or upon the termination of the Contract, in accordance with Vapour's instructions, you will:
 - (a) return or destroy any Avaya Software provided under the Contract that has been installed or downloaded at your or your Customers' premises, on any devices, or otherwise made available or accessible by you, as applicable;
 - (b) provide Vapour with a certificate signed by your authorised representative confirming that the requirements set out in Paragraph 9.7.1(a) have been met; and
 - (c) Vapour will have the right to disconnect and remove any Vapour Equipment located at the Site(s).

10 NOTIFICATION OF INCIDENTS

- 10.1 Vapour will take Incident reports from you through our Service Desk, in line with your customer support plan (CSP), only once you reasonably believe that the Incident is attributable to the Service and is not attributable to any non-Vapour Equipment.

Part C – Service Levels

11 SERVICE LEVELS

11.1 Service Provisioning Service Level

11.1.1 Vapour will aim to provide the ACS Select Service elements set out in the table below within the following target timescales but Vapour has no liability for any failure to meet them:

Type of Provision	Business Days
Service Establishment from acceptance by Vapour of a correctly completed CRF	15
Provision of a new ACS Select Service Order, excluding number porting, from acceptance by Vapour of a correctly completed Order	18
Addition of functionality (excluding Secure Payments) to an existing Customer Service from acceptance by Vapour of a correctly completed Order	15
Provision of the Secure Payments Service, from acceptance by Vapour of a completed Order – excluding PSP or IVR integration	60
Provision of the IR Service, from acceptance by Vapour of a completed Order	15
Modification of attributes of an existing capability	As set out in the Product Handbook
MACDs which you are unable to self-serve	As set out in the Product Handbook

11.2 Incident Management Service Levels

11.2.1 Service Level Definitions

Priority 1, 2, 3 and 4 Incidents, excluding outages for Planned Maintenance or Emergency maintenance or Incidents that fall outside the Service Management Boundary, are as described below:

Incident Priority	Description
Priority 1 Incident, Critical Outage	Incidents that severely affect Call Processing affecting more than the greater of 20 and 20 per cent of a Customer's Users and requires immediate corrective action for example: (i) no Calls can be placed into the Customer Service workflows or campaign queues; or (ii) no Calls can be made from the Customer Service.
Priority 2 Incident, Major Impact	Incidents that cause conditions that significantly affect system operation, maintenance, and administration and require immediate attention. The urgency is less than in critical situations because of a lesser effect on system performance, for example: (i) there are Call Processing Incidents affecting less than the greater of 20 and 20 percent of a Customer's Users; (ii) the system performance is degraded; or (iii) there is no reasonable workaround.
Priority 3 Incident, Minor Impact	Incidents which do not significantly impair the functioning of the ACS Select Service and do not significantly affect the service to Customers or Users, for example: (i) individual User Incidents; (ii) Incident is non-critical or not affecting a Customer Service; or (iii) there is a reasonable workaround.
Priority 4 Incident, Informational	Information needed concerning the ACS Select Service's product capabilities, advice or basic configuration. This priority is restricted to "How To...." questions and therefore handled as non-service impacting, for example: (i) configuration questions;

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Incident Priority	Description
	(ii) usability issue, documentation problem; or (iii) there is an easy workaround or no workaround is required.

11.2.2 Response, Restoration and Resolution Timeframes

Priority Level	Category	Response	Restoration (Call Processing)	Restoration (Other Applications)	Resolution	Measurement Period
Priority 1	Critical	≤60 minutes	3 hours	5 hours target	≤ 15 days	24 x 7 x 364
Priority 2	Major	≤60 minutes target	5 hours target	7 hours target	≤ 15 days target	24 x 7 x 364
Priority 3	Minor	≤ 6 hours target	12 hours target	24 hours target	≤ 60 days target	Mon - Fri 09:00 - 17:30
Priority 4	Informational	≤ 24 hours target	n/a	90 per cent in 5 Business Days target	n/a	Mon - Fri 09:00 - 17:30

11.2.3 Regardless of what it says in the table above, where a Customer Service uses the Managed Network Service Option which is not dual access, the target restoration time for a Priority 1 or 2 Incident caused by a failure of the Managed Network Service Option is five hours.

11.2.4 Vapour will aim to provide a solution within the target timeframes set out in the table above. For Priority 1 Incidents, and Priority 2 Incidents, Vapour will aim to provide a temporary solution to resolve the Incident while a permanent solution is developed.

11.2.5 Both of us may agree that Priority 1 Incidents may be downgraded to Priority 2 Incidents, and Priority 2 Incidents may be downgraded to Priority 3 Incidents, following the application of a temporary solution.

11.2.6 To meet the above targets, Vapour may require that the affected Customer's personnel be on Site and that remote access to the Customer Service, or affected product or system be available to allow remote diagnostics and maintenance.

11.2.7 The clock will stop on a timeframe where Vapour requests reasonable assistance or further information from you in relation to an Incident, and will restart once the necessary assistance or information has been received by Vapour.

11.2.8 The Service Levels will apply to Qualifying Incidents traced to the ACS Select Service or Customer Service and not to Customer Equipment or your, or your Customers' network.

11.2.9 It is technically impracticable to provide a fault free ACS Select Service and Vapour does not undertake to do so.

11.2.10 If Vapour fails to restore the Call Processing for a Priority 1 Qualifying Incident the Service Credits set out in Paragraph 11.3 will apply.

11.3 Call Processing Restoration Service Credits

11.3.1 If Vapour does not restore the Call Processing function where it is Out of Service as a result of a Priority 1 Qualifying Incident within the timescales set out in the table below in any Measurement Period ("**Call Processing Restoration Service Level**"), you may request a Service Credit at the rate set out in the table below ("**Call Processing Restoration Service Credit**"):

Call Processing Restoration Service Level	Service Credit
>2 hours <4 hours	1.5%
>4 hours	2%

11.3.2 Call Processing Restoration Service Credits will be the applicable percentage of the total net amount Vapour invoices you during the Measurement Period for ongoing monthly Charges (excluding Call Charges) for the affected Customer Service.

11.3.3 The maximum aggregate Service Credit payable in respect of any Measurement Period is 3 per cent of the monthly Charges for that Measurement Period.

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11.3.4 Call Processing Restoration Service Credits will only become payable by Vapour for Priority 1 Qualifying Incidents that occur from the beginning of the second month following the applicable Customer Service Start Date.

11.4 ACS Select Service Availability for each Service Plan

11.4.1 Excluding outages for Planned Maintenance, Emergency Maintenance and Non-Qualifying Incidents, Vapour will aim to provide the target Service Levels set out in the table below:

Feature	Service Plan	Target Availability	
		Internet or self-provide access network	Managed Network Service Option
IPO	Standard	99.95%	Single access: 99.9% Dual Access: 99.95%
	Disaster Recovery	99.95%	Single access: 99.9% Dual Access: 99.95%
	Business Continuity	99.995%	Single access: 99.95% Dual Access: 99.99%
IPO/ACCS	Standard	99.95%	Single access: 99.9% Dual Access: 99.95%
	Business Continuity	99.99%	Single access: 99.94% Dual Access: 99.985%
	Business Continuity Plus	99.995%	Single access: 99.95% Dual Access: 99.99%

11.4.2 Application Availability will be measured 24 hours a day, over a rolling 12 month period. Applications will be considered to be available unless Out of Service.

11.5 Planned Maintenance Service Level

11.5.1 Vapour will aim to provide the following notifications of Planned Maintenance that will impact ACS Select Service Availability:

- (i) target 20 Business Days for Software updates and patches; and
- (ii) target 5 Business Days for all other Planned Maintenance.

11.6 Vapour has no liability for failure to meet any target Service Levels.

12 REQUESTS FOR SERVICE CREDITS

12.1 You may request applicable Service Credits within 28 days of the end of the calendar month in which a Qualifying Incident occurred by providing details of the reason for the claim including:

12.1.1 the date and time at which the Qualifying Incident occurred;

12.1.2 the Customer Service affected;

12.1.3 the impact of the Qualifying Incident on the ACS Select Service including:

- (i) a detailed description of the Incident;
- (ii) the impacted Applications; and
- (iii) the impacted Customer name.

12.2 Any failure by you to submit a request in accordance with Paragraph 12.1 will constitute a waiver of any claim for Service Credits in that calendar month.

12.3 Upon receipt of a valid request for Service Credits in accordance with Paragraph 12.1;

12.3.1 Vapour will issue you with the applicable Service Credits by deducting those Service Credits from your invoice within two billing cycles of the request being received; and

12.3.2 following expiry or termination of the Contract where no further invoices are due to be issued by Vapour, Vapour will pay you the Service Credits in a reasonable period of time.

12.4 All Service Levels and Service Credits will be calculated in accordance with information recorded by, or on behalf of, Vapour.

12.5 The Service Levels under this Schedule will not apply:

12.5.1 in the event that Clause 9 or Clause 24 of the General Terms for Resellers applies;

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- 12.5.2 during any trial period of the ACS Select Service, or before charging has commenced in accordance with Paragraph 7.10.1;
- 12.5.3 to any Incident not reported in accordance with Paragraph 10 ;
- 12.5.4 to Incidents on the Customer Equipment outside of the Service Management Boundary;
- 12.5.5 to Incidents with the Customer Service due to your, or your Customers' action(s);
- 12.5.6 to any failure of access from suspension of ACS Select Service for breach of contract by you;
- 12.5.7 to outages due to unscheduled upgrades requested by you;
- 12.5.8 to outages due to applicable national laws, customs, or regulations;
- 12.5.9 in the event of a Non-Qualifying Incident;
- 12.5.10 where an outage occurs during or as a result of you implementing a back-up, patch, update or upgrade;
- 12.5.11 to any Incidents caused by you due to:
 - (i) unavailability of your personnel in order to determine or isolate the Incidents including **"Customer Pending Status"**; or
 - (ii) Incidents caused by your or your Customers' applications, equipment or supplier;
- 12.5.12 to unavailability of the ACS Select Service as a result of problems with environmental conditions (power, climate, housing, switch off) at your, or your Customers' Sites;
- 12.5.13 to the introduction of unauthorised changes to Vapour Equipment (if applicable) or Customer Equipment failure;
- 12.5.14 where you order the standard or disaster recovery Service Plan, as defined in the Product Handbook, and an Incident occurs as a result of a failure of the applicable Vapour data centre; or
- 12.5.15 you order a Managed Network Service Option which is not Dual Access and the Incident occurs as a result of a failure of the Managed Network Service Option.

Part D – Defined Terms**13 DEFINED TERMS**

In addition to the defined terms in the General Terms for Resellers, capitalised terms in this Schedule will have the following meanings (and in the case of conflict between these defined terms and the defined terms in the General Terms for Resellers, these defined terms will take precedence for the purposes of this Schedule):

“ACS Select Service” has the meaning set out in Paragraph 2.1.

“Acceptance Tests” means those objective tests conducted by you which, when passed, confirm that the ACS Select Service is accepted by you and ready for use except for any minor non-conformities which will be resolved as an Incident in accordance with Paragraph 9.5.

“Access Line” means a Circuit connecting the Site(s) to the Vapour Network.

“Accredited Personnel” means your personnel that have completed all mandatory operational and technical training courses.

“ACCS” or **“CC”** means the Avaya Contact Centre Select suite of Applications as set out in the Product Handbook.

“ACCS Multimedia Agent Monthly Usage Charge” means the Charge for the use of the ACCS Multimedia Agent Application,

“ACCS Open Queue Usage Charge” means the Charge for the use of ACCS Open Queue Application.

“ACCS Report Creation Wizard Usage Charge” means the Charge for the use of ACCS Report Creation Wizard Application.

“ACCS Supervisor Usage Charge” means the Charge for the use of the ACCS Supervisor Application, which includes the required Telephony Profile.

“ACCS Voice Agent Monthly Usage Charge” means the Charge for the use of the ACCS Voice Agent Application, over and above the volumes agreed, which includes Call recording and the required Telephony Profile.

“ACS Select Service Availability” has the meaning give in Paragraph 11.4.

“Additional Training Charge” means a Charge where Vapour provides you with additional training to that set out in Paragraph 2.6 or to you as required on an hourly basis.

“Administrator” means a person authorised by you to manage MACDs for a Customer Service and, where authorised by you, to manage passwords of Users and Agents.

“Agent” means an individual of the Customer who is Provisioned to use the Call Centre Applications and who receives or makes Calls using the ACS Select Service.

“Application” means a capability supported by the ACS Select Service, as set out in the Product Handbook, which can be made available to Agents and Users of the Customer Service.

“Application Programming Interface” or **“API”** means a set of routines, protocols and tools used for building software applications which specify how software components should interact.

“Archive” or **“Archiving”** means the storage of Call or data recordings beyond the applicable ACS Select Service default retention period, as set out in the Product Handbook.

“Availability” means the period of time when the ACS Select Service for each applicable Service Plan, is functioning.

“Avaya” means the Supplier.

“Avaya Edge Partner Programme” means a global customer program provided and managed by Avaya. Further detail is available at https://www.avaya.com/en/documents/mis7940_edge.pdf.

“Avaya Software” means Avaya software programs in object code form, whether as stand-alone products or pre-installed on Customer Equipment.

“Billing Back-Up File” means a report located on the Vapour Billing Portal website, detailing the number of Profiles and other such products you order.

“Billing Period” means a calendar month.

“Billing Portal” means the web based portal which Vapour provides you to enable you to access and download Call Data Records (CDRs), or Billing Back-Up Files to enable you to bill your Customer.

“Billing User Guide” means a guide as may be amended from time to time that details how the ACS Select Service is billed, which is available on the Vapour Website or as Vapour otherwise makes available to you.

“BT Corporate Mark” means the letters **“BT”** together with the connected world device.

“Vapour Network” means the communications network owned or leased by Vapour and used to provide the ACS Select Service.

“BT Website” means the website located at URL www.btwholesale.com or such other website or URL as Vapour may notify you from time to time.

“Business Hours” means between the hours of 09:00 and 17:30 in a Business Day.

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“Call” means a signal, message or communication which can be silent, visual or spoken, excluding text messages.

“Call Centre Applications” means applications provided by ACCS, or the integrated contact reporter feature of IP Office.

“Call Data Record” or **“CDR”** means a report which includes details of all Calls made.

“Call Processing” the method by which the ACS Select Service enables a User to make or receive voice Calls.

“Call Processing Restoration Service Credit” has the meaning given in Paragraph 11.3.

“Call Processing Restoration Service Level” has the meaning given in Paragraph 11.3.

“Card” means a payment card bearing the logo of American Express, Discover, JCB, MasterCard or Visa.

“Circuit” means any line, conductor, or other conduit between two terminals by which information is transmitted, and that is provided as part of the ACS Select Service.

“CLI” means Calling Line Identification, the feature which provides the phone number of the caller as the Call comes in.

“CLI Code of Practice” means the code by the same name as set out at:

<http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/cliguide.pdf>.

“Communications Provider” or **“CP”** means a ‘Communications Provider’ as defined in Paragraph 1.4(a) of Condition 1 of the General Conditions of Entitlement set by OFCOM pursuant to section 45 of the Communications Act 2003.

“Content” means applications, data, information (including emails), video, graphics, sound, music, photographs, software or any other material.

“CPE” means any customer premises equipment (including software) owned or operated by you and either connected to or used in conjunction with the Customer Service.

“CRM Payments Pages” means your computer system pages presented to Secure Payments Authorised Users when processing transactions.

“Customer Committed Date” means the date provided by Vapour on which delivery of the ACS Select Service (or each part of the ACS Select Service, including to each Site) is due to start.

“Customer Contact” means any individuals authorised to act on your behalf for ACS Select Service management matters.

“Customer Equipment” means any equipment including any CPE and any software, other than Vapour equipment, used by you in connection with the ACS Select Service or Customer Service.

“Customer Requirements Form” or **“CRF”** means the form that sets out the requirements for the ACS Select Service agreed between both of us.

“Customer Service” means the service provided by you to your Customers using the ACS Select Service provided by Vapour.

“Customer Service Plan” means a document containing details of Customer Contacts, addresses and telephone numbers for ordering or maintenance of the ACS Select Service provided under the Contract; and which sets out the escalation process and procedures for managing disputes.

“Customer VPN” means the secure network connection used by you to access and manage your Tenants, as set out in the Product Handbook

“Daytime” means Monday to Friday, inclusive, between the hours of 08:00 and 18:00.

“Documentation” means the Product Handbook, Billing User Guide, and Customer Service Plan, manuals or other documentation supplied by Vapour under the Contract relating to the use or operation of the ACS Select Service and which do not form part of the Contract.

“Duel Access” means two separate access circuits being provisioned to yourSite(s) from two separate Ethernet enabled Vapour exchanges under the Managed Network Service Option.

“Domain Name” means a readable name on an Internet page that is linked to a numeric IP Address.

“E.164” means the ITU-T numbering plan for the world-wide public switched telephone network (PSTN).

“E-LAN” means a layer 2 virtual private network which interconnects Customer ports so they appear as though they were physically on the same Local Area Network.

“Electronic Communications Network” means the same as that set out in The General Conditions of Entitlement found on the Ofcom Website

“Electronic Communications Service” means the same as that set out in The General Conditions of Entitlement found on the Ofcom Website

“Emergency” means a serious situation or occurrence that:

- (i) threatens life and limb; or
- (ii) may cause or threaten to cause damage to physical property or systems; or
- (iii) happens unexpectedly

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and demands immediate action.

"Emergency Call" means a Call to 999 or 112.

"Emergency Calls Access" means that component of the ACS Select Service conveying Emergency Calls as described in Paragraph 7.5.

"Enabling Service" has the meaning given in Paragraph 5.1.

"Ethernet" means a family of computer networking technologies for Local Area Networks.

"Etherway Access" means a Vapour Wholesale dedicated Circuit from your or your Customer's Site connecting to the nearest POP capable of supporting the Customer Service.

"First Level Support" means the handling of Calls direct to you from your Customers.

"Hosting Set Up Charge" means the charge for the Secure Payments Service Hosting Set Up Service.

"Hosting Set Up Service" means the set up activity to enable you to access the Secure Payments Service.

"Hybrid Connect" means a Service Option enabling a SIP Trunking service to be provided to a Site or compatible PBX either as a temporary (i.e. as part of a migration strategy) or a permanent solution, as set out in the Product Handbook.

"Hybrid Connect Only Service" means an ACS Service configuration where a Customer uses Hybrid Connect Voice Channels and there is no IPO or ACCS.

"Hybrid Connect Voice Channel" means the SIP Trunking capacity required to carry a single Call between the Hybrid Connect Site and the ACS Select Service.

"IM Auditing" means an instant messaging auditing service which can be ordered as part of the IR Service Option.

"IM Auditing Option" means an option related to the IR Service as further defined in the Product Handbook.

"Incident" means an unplanned interruption to, or a reduction in the quality of, the ACS Select Service or particular element of the ACS Select Service.

"Incident Management Service Level" has the meaning given in Paragraph 11.2.

"Incoming Calls" means Calls made to a User from destinations with E.164 numbers.

"Intelligent Import Option" means an option related to the IR Service which is further defined in the Product Handbook.

"Intelligent Recording Service" or **"IR Service"** means an optional suite of recording options, as set out in the Product Handbook, available for fixed and mobile users, which offers secure recording and archiving.

"Internal Calls" means Calls made between Users configured within the same Customer where both Users are using IP phones (hard or soft).

"International Destination Network" means a network operated in a country other than the United Kingdom.

"Internet" means a global system of interconnected networks that use a standard Internet Protocol to link devices worldwide.

"Internet Only Access" means a Service Option where the ACS Select Service is consumed by you exclusively by use of your Customer's Internet connection rather than via Ethernet connectivity provided by Vapour as a part of the ACS Select Service or as an Enabling Service.

"Internet Protocol" or **"IP"** means a communications protocol for devices connected to the Internet that specifies the format for addresses and units of transmitted data.

"IP Address" means a unique number on the Internet of a network card or controller that identifies a device and is visible by all other devices on the Internet.

"IP Office" or **"IPO"** means the Avaya IP Office suite of Applications as set out in the Product Handbook.

"Liabilities" means all awards, compensation, costs, expenses, losses, liabilities, damages, claims, proceedings, awards, fines, orders, demands, actions, payments by way of settlement, penalties, tribunal awards and other liabilities (including legal and other professional fees and expenses on an indemnity basis) whenever or however arising or brought.

"Local Access" means a connection from a Site to the Vapour Network which connects directly to the nearest fibre enabled Vapour POP, as opposed to non Local Access which refers to a connection from a Site to the Vapour Network which involves passing through one or more Vapour POPs to reach the nearest fibre enabled Vapour POP.

"Local Area Network" or **"LAN"** means the infrastructure that enables the ability to transfer IP services within Sites, including data, voice and video conferencing services.

"MACD" means moves, adds, changes and deletes of features or Users to the ACS Select Service.

"Managed Network" means those Service Options set out in the Product Handbook that extend the Service Management Boundary to your Site by Vapour providing a resilient network connecting the Vapour data centres to your Site.

"Measurement Period" means 24 hours per day for a calendar month.

"Merchant" means an entity that accepts Cards as payment for goods or services.

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"MiFID" means the Markets in Financial Instruments Directive which is legislation for the regulation of investment services within the European Economic Area.

"Minimum Period of Service" means, (a) for each Customer Service, a period of 37 consecutive months beginning on the Service Start Date, unless otherwise set out in an Order, and (b) for this Contract 37 months from the Effective Date.

"Modify" or **"Modification"** means the addition, change or removal of a Profile, feature option or parameter to a Customer Service, as set out in the Product Handbook.

"Modify Order Process" means the process for amending the ACS Select Service as set out in the Product Handbook.

"Music on Hold" means a feature of the ACS Select Service that enables a continuous broadcast of music to be played to callers in a queue or held on a Call.

"National Telephone Numbering Plan" means a document published by Ofcom from time to time pursuant to sections 50 and 60 of the Communications Act 2003.

"Non-Qualifying Incident" means an Incident where the following events have occurred:

- (i) where a Customer Service is deployed with the standard Service Plan and the Incident has resulted from failure of the applicable Vapour data centre;
- (ii) where a Customer Service is deployed with the disaster recovery Service Plan and the Incident has resulted from failure of the primary Vapour data centre; and
- (iii) in relation to the ACCS Applications, where an ACCS Customer Service is deployed with the business continuity Service Plan and the Incident has resulted from failure of the primary Vapour data centre.

"Notice to Amend" has the meaning given in Paragraph 7.1.4.

"Number Portability" means an arrangement between both of us whereby your Customer's telephone number ceases to be provided by the losing CP and such Customer telephone number is subject to number import onto the ACS Select Service. If your Customer's telephone number ceases to be used by you then it may be subject to number export to the gaining CP under the Number Portability rules as set out in the Product Handbook.

"Numbering Services" means provision of new geographic numbers and porting of existing geographic numbers.

"Occurrences" has the meaning given in Paragraph 7.19.

"Ofcom" means the Office of Communications as empowered by the Communications Act 2003, or any other competent successor body or authority.

"Outgoing Call" means Calls from Users to destinations outside of the Customer Service.

"Out of Service" means an outage affecting more than 20 per cent (but not less than 20) of your Customer's Users for the applicable Application, excluding outages for a Non-Qualifying Incident, Planned Maintenance or Emergency maintenance.

"PBX" means private branch exchange.

"PCI DSS" means the Payment Card Industry Data Security Standards, a widely accepted set of policies and procedures, issued by the PCI Security Standards Council LLC (as may be adopted by local regulators) and intended to optimise the security of credit and debit card transactions and protect cardholders against misuse of their personal information.

"Planned Maintenance" means any Maintenance Vapour has planned to do in advance.

"Planned Maintenance Service Level" has the meaning given in Paragraph 11.5.

"POP" means a BT point of presence on the BT Network.

"PSP" means a Payment Service Provider who offers online services for accepting electronic payments by a variety of payment methods.

"PSTN" means Public Switched Telephone Network, which is the concentration of the world's public circuit switched telephone networks.

"Permitted Purpose" means use of the Secure Payment Service for the purpose of receiving payment over the telephone.

"Policy for Credit Vetting" means the policy Vapour applies for credit vetting.

"Premium Rate Service" means a communications service where Call Charges include a premium to cover the cost of content or an element of the ACS Select Service above the costs and charges attributable to conveyance.

"Presentation Number" means a telephone number made available to a called party.

"Product Handbook" means the library of handbooks containing information to assist you relating to the ACS Select Service, including supported features, configuration, service management and billing, which is available on request. **"Professional Services"** means services provided by Vapour in response to ad hoc bespoke

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Customer requests including extra training, support and integration development, all of which is subject to scoping and will be chargeable.

"Profile" means an Application or a feature of an Application which can be ordered as part of the ACS Select Service and as described in the Product Handbook.

"Provider Independent Resources" or **"PIR"** means resources assigned to Users that include autonomous system numbers, provider independent IPv4 addresses, any cast assignments, provider independent IXP IPv6 addresses and all future provider independent resources.

"Provisioned" means that the User has been enabled by you using the Service Portals to log on and use the applicable Applications, as set out in the Product Handbook.

"Qualifying Additional IR Service Profile" means either the Business Call Recording, Secure Call Recording, Encrypted Call Recording, On Demand Call Recording, Mobile Compliance Standard Recording, SfB Call Recording or SfB Instant Messaging Recording Profiles of the Intelligent Recording Service, as defined and set out in the Product Handbook

"Qualifying Incident" means a Priority 1 Incident, except where any of the following events have occurred:

- (i) Acceptance has not taken place;
- (ii) it is less than 30 Days from the applicable Service Start Date;
- (iii) the Customer Service has been modified or altered in any way by you, or by Vapour in accordance with your instructions;
- (iv) Planned Maintenance;
- (v) you have performed any network configurations that Vapour did not approve;
- (vi) an Incident has been reported and Vapour cannot confirm that an Incident exists after performing tests; or
- (vii) you requested Vapour to test the ACS Select Service at a time when no Incident has been detected or reported.

"Priority 1 Incident" has the meaning given in Paragraph 11.2.1.

"Priority 2 Incident" has the meaning given in Paragraph 11.2.1.

"Priority 3 Incident" has the meaning given in Paragraph 11.2.1.

"Priority 4 Incident" has the meaning given in Paragraph 11.2.1.

"Receptionist" means an IP Office Application as set out in the Product Handbook.

"Resolution" means the time from the creation of a Ticket until Vapour has a full fix to the Incident.

"Response" means the time from creation of the Ticket until Vapour contacts you.

"Restoration" means the time from creation of a Ticket until Vapour restores the ACS Select Service. If the Incident cannot be resolved immediately, Vapour may provide a work around until the Incident is fully resolved.

"RIPE" means the Réseaux IP Européens, an organisation of European IP networks whose primary activity is the assignment and management of Internet numbers such as IP addresses and autonomous system numbers.

"RIPE Policies" means those policies published on the RIPE website at <https://www.ripe.net/publications/> that may be amended from time to time.

"RIPE WHOIS" means the RIPE database which provides contact and registration information for IP addresses, autonomous system numbers (ASN), organizations or customers that are associated with these resources, and related Points of Contact (POC). It does not include information on domain names.

"Second Level Support" means Vapour's provision of the following:

- (i) resolving the majority of miss-configurations;
- (ii) troubleshooting and simulation of complex configuration, hardware, and software problems;
- (iii) supporting problem isolation and determination of ACS Select Service specification defects (if possible);
- (iv) defining a problem resolution action plan;
- (v) undertaking in-depth analysis of traces and log files;
- (vi) providing support on all protocols and features;
- (vii) diagnosing problems remotely;
- (viii) providing descriptions of problems which cannot be resolved by Second Level Support; and
- (ix) providing coordination with third party hardware suppliers to resolve any Incidents set out in Paragraphs (i) to (viii) above.

"Secure Payments Service" means a cloud based service that provides access to hosted Software, including API's, Semafone proxy payment pages and Semafone proxy payment fragments, that enables you to receive card payments over the telephone without the Agent seeing or hearing the caller's payment card information, as set out in the Product Handbook.

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“Secure Payments Authorised Users” means those employees, agents and independent contractors of you or Customer Affiliates, but only where such Affiliate’s use of the Secure Payments Service has been expressly agreed by Vapour in writing, who are authorised by you to use the Secure Payments Service for the Permitted Purpose as part of your Customer’s internal business purposes.

“Secure Mode” means the operational mode which masks the card details from the Secure Payments Service Authorised User.

“Semafone” means a third party supplier of technology providing secure voice transactions for contact centres and retailers taking cardholder not present payments.

“Service Desk” means the helpdesk that you will be able to contact for support as set out in Paragraph 10.1. The Service Desk will provide you with Support 24 hours a day, 364 days a year in relation to Priority 1 and during Business Hours in relation to Priority 2 - 4 Incidents

“Service Start Date” means for each Customer Service, the date on which each Customer Service is first made available to you.

“Service Establishment” means the process as set out in Paragraph 9.1.

“Service Management Boundary” has the meaning given in Paragraph 4.1.

“Service Options” has the meaning given in Paragraph 3.

“Service Pack” means a collection of updates, fixes, or enhancements, including Service Patches, provided by Vapour in the form of a single installable package designed to update an Application or its supporting data, to fix or improve it, along with instructions and timelines for implementation.

“Service Patch” means Software provided by Vapour designed to update an Application or its supporting data, to fix or improve it, along with instructions and timelines for implementation.

“Service Plan” means a resilience and service experience option, as set out in the Product Handbook, selected by you for each of your Customers at the time of ordering, and which can be enhanced through a Modify Order.

“Service Portals” means portals used by you and by your Customer, if you specifically delegate access to them, to administer the Customer Service and configure Applications, as further described in the Product Handbook.

“Service Provisioning Service Level” has the meaning given in Paragraph 11.1.

“Single Access” means one access circuit being provisioned to your Customer’s Site(s) from an Ethernet enabled Vapour exchange under the Managed Network Service Option.

“SIP” means session initiation protocol.

“SIP Service Provider” means a provider of electronic communications services or networks using SIP Trunking technology and operating under any regulation, license or other authorisation applicable within their local jurisdiction.

“SIP Trunking” means an alternative to PSTN or ISDN services using VoIP technology.

“Skype™ for Business (SfB) Call Recording Option” means an option related to the IR Service as further defined in the Product Handbook.

“Staff” means any person employed or engaged by or through you or any or your subcontractors in the provision of a service prior to the commencement of the ACS Select Service.

“Standard Service Components” has the meaning given in Paragraph 2.

“Super Administrator” means a person nominated by you who is provided with administration rights over all your employees and your Customer’s Users who have access to the ACS Select Service and who is also responsible for distributing, managing and maintaining access profiles, passwords and other system administration information relating to the control of Administrators’ and Users’ access to the ACS Select Service or Customer Service;

“Supervisor” means an individual who manages Agents and requires access to the supervisor management and reporting tools, as set out in the Product Handbook.

“Supplier” means Vapour and its suppliers BT’s and Avaya Inc., an American company located at 4655 Great America Parkway, Santa Clara, CA 95054-1233 USA.

“Telephone Preference Service” or **“TPS”** means an official central opt out register on which individuals can record their preference not to receive unsolicited sales or marketing calls. It is a legal requirement that all organisations (including charities, voluntary organisations and political parties) do not make such calls to numbers registered on the TPS unless they have such individuals’ consent to do so.

“Telephony” means the Avaya IP Office telephony or Application, as set out in the Product Handbook.

“Teleware” means a third party supplier of solutions and applications that provides business communications solutions for mobility, personal contact management, messaging and call distribution and control.

“Tenant” means a dedicated instance of the Service, deployed and securely partitioned from other tenants of the Service, which supports each Customer Service.

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“Third Level Support” means support provided by Vapour which includes, troubleshooting and fixing or generating workarounds for software bugs, where software bugs are described as code or database configuration errors found in Software limited to code, not including any configuration changes or database changes made by any parties other than the Software supplier. Third Level Support will additionally include:

- (i) additional support on all protocols and features;
- (ii) analysis of traces and log files;
- (iii) root cause analysis;
- (iv) installation and configuration support; and
- (v) core dumps for the purpose of fixing software bugs.

“Ticket” means the unique reference number provided by Vapour for an Incident and that may also be known as a **“fault reference number”**.

“Type 3 Presentation Number” has the meaning given by Ofcom which can be found at: <http://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-industry-guidance/calling-line-identification>.

“Type 5 Presentation Number” has the meaning given by Ofcom which can be found at: <http://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-industry-guidance/calling-line-identification>.

“UC Upgrade Charge (Medium)” and **“UC Upgrade Charge (Large)”** means the Charges for upgrading Telephony Profiles when you have insufficient volume of Telephony Users.

“Unified Communication” or **“UC”** means the Avaya IP Office UC suite of Applications, as set out in the Product Handbook.

“Uniform Resource Locator” or **“URL”** means a character string that points to a resource on an intranet or the Internet.

“Usage Charges” means the Charges for the ACS Select Service or applicable part of the ACS Select Service that are calculated by multiplying the volume of units used or incurred by you in a period with the relevant fee.

“Voice Channel” means the capacity needed to carry a single Call, as set out in the Product Handbook.

“VoIP” means delivery of voice and multimedia communications over Internet Protocol (IP) networks.

“WAN” means a wide area network carrying telecommunications or computer traffic between locations.

“WEEE” has the meaning given in Paragraph 6.4.1.

“WEEE Directive” has the meaning given in Paragraph 6.4.1.



Product Schedule **Vapour Cloudware**



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 99.9% 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
99.9% > 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 99.9% 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
	99.9% > 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



Product Schedule

Vapour Gaze Avaya Equinox® Meetings Online



Vapour Avaya Cloud Voice Solution - Product Schedule

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Vapour Avaya Cloud Voice Solution - Product Schedule

INTRODUCTION

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, attached, or available upon 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 Gaze - Avaya Equinox® Meetings Online service.

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.

ABOUT THIS PRODUCT SCHEDULE

The terms set out in this Product Schedule are applicable to customers receiving the Vapour Gaze - Avaya Equinox® Meetings Online Services. This will be indicated in the PAC.

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 Gaze - Avaya Equinox® Meetings Online 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 Gaze - Avaya Equinox® Meetings Online Services.

A NOTE ON 'YOU'

'You' and 'your' mean you as the Customer.

A NOTE ON 'VAPOUR'

'Vapour' means Vapour Media Limited and its subcontractors BT Wholesale and Avaya.

Part A – The Service

1 SERVICE SUMMARY

Vapour will provide you a limited, non-sublicensable, non-exclusive, non-transferable right to permit End Users to access and use the Services and associated Documentation obtained from Avaya, (a) in connection with Customer's internal business operations and the internal business operations of End Users, (b) for Customer Data within the Territory, and (c) in accordance with the Documentation. Your use of the Services is limited to number of licenses or units of capacity specified in the applicable order or other Avaya Documentation provided to Customer.

2 NOTICE OF ANY SECURITY BREACHES AND EMERGENCY SECURITY ISSUES

Avaya retains the right to provide notice of security breaches as they relate to the Service as necessary to comply with applicable laws and regulations. In the event of a security breach, Partner and Customer will cooperate and coordinate fully with Avaya with respect to the timing and content of any such notice. To the extent permitted by applicable law, Avaya is not responsible for any costs of notifying any end Customers of such a security breach, and the end Customer is responsible for all costs of notifying the end Customer's employees and, if applicable, its customers of a security breach. If there is an emergency security issue, the end Customer's account may be suspended automatically. If there is a suspension, Avaya will endeavor to ensure that suspension would be to the minimum extent required and of the minimum duration to prevent or terminate the issue. If an end Customer's account is suspended without prior notice, Avaya will provide the reason for the suspension as soon as is reasonably possible.

Vapour Avaya Cloud Voice Solution - Product Schedule

3 RESTRICTIONS

This Service may not be used for High Risk Activities and may not be sold to an end Customer using the Service for any High Risk Activities. "High Risk Activities" means activities where the use or failure of the Service could lead to death, personal injury, or environmental damage, such as the operation of nuclear facilities, air traffic control, or life support systems. This Service may also not be used for the transmission of protected health information.

4 EMERGENCY SERVICES NOTICE AND DISCLAIMER

- 4.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE END USERS / CUSTOMER UNDERSTAND AND ACKNOWLEDGE THAT THE SERVICE, AS PROVIDED BY AVAYA, IS NOT CONFIGURED TO SUPPORT OR PROVIDE EMERGENCY CALLS OR COMMUNICATIONS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO 911 AND E911 SERVICE. IT IS RECOMMENDED THAT ANY USER OF THE SERVICE HAVE AN ALTERNATIVE MEANS OF ACCESSING EMERGENCY SERVICES. PARTNER OR CUSTOMER MAY HAVE AN OBLIGATION TO PROVIDE EMERGENCY SERVICES, INCLUDING, BUT NOT LIMITED TO 911/E911 SERVICE. IN ORDER TO PROVIDE EMERGENCY SERVICES TO USERS, AN APPROPRIATE EMERGENCY SERVICE SOLUTION MUST BE IMPLEMENTED THROUGH A THIRD-PARTY AND PROPERLY CONFIGURED TO ROUTE EMERGENCY CALLS.
- 4.2 CUSTOMER OR PARTNER ARE SOLELY RESPONSIBLE FOR CONFIGURING AND TESTING ANY EMERGENCY SERVICE SOLUTION, INCLUDING CONFIGURATION OF THE SERVICE. AVAYA (INCLUDING ITS AFFILIATES) SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY AND ALL CLAIMS, DEMANDS, SUITS, PROCEEDINGS, LIABILITIES, SETTLEMENTS, ATTORNEYS' FEES, COSTS, EXPENSES, PENALTIES, FINES, JUDGMENTS AND DAMAGES OF ANY KIND RESULTING FROM ANY ACTS OR OMISSIONS RELATED TO CONFIGURATION OR PROVISION OF THE SERVICE FOR EMERGENCY SERVICE.
- 4.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY, AVAYA (INCLUDING ITS AFFILIATES) SHALL HAVE NO LIABILITY OR RESPONSIBILITY ARISING OUT OF ANY EMERGENCY SERVICES OR ANY ACTS, OMISSIONS, FAILURES OR INTERRUPTIONS OF SERVICE,
- 4.4 NEGLIGENCE OR OTHER MISCONDUCT OF ANY EMERGENCY SERVICE PROVIDER, INCLUDING, WITHOUT LIMITATION, 911 OR E911 PROVIDER, OTHER EMERGENCY CALL CENTER PROVIDER, PARTNER OR CUSTOMER. AVAYA (INCLUDING ITS AFFILIATES) MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE NATURE, SCOPE, EXTENT, PERFORMANCE, COMPATIBILITY, OR QUALITY OF ANY EMERGENCY SERVICES OR SIMILAR SERVICES. CUSTOMER AND PARTNER HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS AVAYA AND ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AFFILIATES, ATTORNEYS, AND AGENTS, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, PROCEEDINGS, LIABILITIES, SETTLEMENTS, ATTORNEYS' FEES, COSTS, EXPENSES, PENALTIES, FINES, JUDGMENTS AND DAMAGES OF ANY AND ALL KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) BY OR ON BEHALF OF PARTNER, CUSTOMER OR AN END USER OR ANY USER OF THE SERVICE, ARISING OUT OF OR OTHERWISE RELATING TO ANY ACTS, OMISSIONS, FAILURES OR INTERRUPTIONS OF THE SERVICE, NEGLIGENCE AND OTHER MISCONDUCT IN CONNECTION WITH EMERGENCY SERVICES.

5 COMPLIANCE WITH LAWS AND REGULATIONS

- 5.1 Access or use by Customer of the Service constitutes Customer's agreement to (a) this Service Description and (b) the Terms of Use for Hosted Services set forth at Avaya Terms of Use for Hosted Services, and (c) Avaya's Acceptable Use Policy (collectively "Terms of Use"). Avaya's then-current data Privacy Statement and other relevant privacy information may be found at <https://www.avaya.com/en/privacy/solutions/> ("Privacy Statement") or successor sites designated by Avaya, or made otherwise available by Avaya upon request. If Customer does not agree to such Terms of Use, Customer must not use the Service. Customer's right to use the Service will at all times be conditioned on compliance with payment obligations for the Service and compliance with such Terms of Use. If there is an express conflict between the terms of this Service Description, the Terms of Use, or the Privacy Statement, the Terms of Use will govern, followed next by this Service Description, and finally followed by the Privacy Statement.

6 EQUIPMENT

6.1 Use of Vapour Equipment and Purchased Equipment

In relation to Vapour Equipment, and until title in any Purchased Equipment transfers to you in accordance with Paragraph 6.3.4, you will:

- 6.1.1 keep the Vapour Equipment and Purchased Equipment safe and without risk to health;
- 6.1.2 only use the Vapour Equipment and Purchased Equipment, or allow it to be used, in accordance with any instructions or authorisation Vapour may give and for the purpose for which it is designed;

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- 6.1.3 not move the Vapour Equipment or Purchased Equipment or any part of it from the Site(s) without Vapour's written consent and you will pay Vapour's costs and expenses reasonably incurred as a result of such move or relocation;
- 6.1.4 not make any alterations or attachments to, or otherwise interfere with, the Vapour Equipment or Purchased Equipment, nor permit any person (other than a person authorised by Vapour) to do so, without Vapour's prior written consent and, if Vapour gives its consent, agree that any alterations or attachments are part of the Vapour Equipment or Purchased Equipment;
- 6.1.5 not sell, charge, assign, transfer or dispose of or part with possession of the Vapour Equipment or Purchased Equipment or any part of it;
- 6.1.6 not allow any lien, encumbrance or security interest over the Vapour Equipment or Purchased Equipment, nor pledge the credit of Vapour for the repair of the Vapour Equipment or Purchased Equipment or otherwise;
- 6.1.7 not claim to be owner of the Vapour Equipment or Purchased Equipment and ensure that the owner of the Site will not claim ownership of the Vapour Equipment or Purchased Equipment, even where the Vapour Equipment is fixed to the Site(s);
- 6.1.8 obtain appropriate insurance against any damage to or theft or loss of the Vapour Equipment or Purchased Equipment;
- 6.1.9 in addition to any other rights that Vapour may have, reimburse Vapour for any losses, costs or liabilities arising from your use or mis-use of the Vapour Equipment or Purchased Equipment or where the Vapour Equipment is damaged, stolen or lost, except where the loss or damage to Vapour Equipment or Purchased Equipment is a result of fair wear and tear or caused by Vapour;
- 6.1.10 ensure that the Vapour Equipment or Purchased Equipment appears in Vapour's name in your accounting books;
- 6.1.11 where there is a threatened seizure of the Vapour Equipment or Purchased Equipment, or an Insolvency Event applies to you, immediately provide Vapour with Notice so that Vapour may take action to repossess the Vapour Equipment or Purchased Equipment; and
- 6.1.12 notify any interested third parties that Vapour owns the Vapour Equipment and Purchased Equipment.
- 6.2 **Vapour Equipment**
 - 6.2.1 Vapour Equipment will remain Vapour's property at all times and risk in Vapour Equipment will pass to you upon delivery to you, whether or not the Vapour Equipment has been installed.
- 6.3 **Purchased Equipment**
 - 6.3.1 **Ordering Purchased Equipment**
 - (a) Vapour may not always be able to fulfil an Order for Purchased Equipment even though the order form may show the equipment as being available to order.
 - (b) Vapour may reject an Order for Purchased Equipment as set out in the Product Handbook.
 - 6.3.2 **Purchased Equipment Order Cancellation**
 - (a) You may cancel an Order for Purchased Equipment up to ten Business Days before delivery of the Purchased Equipment. If the cancelled Order has a value of more than £3,000 you will pay Vapour a restocking fee of 10 per cent of the Order value.
 - (b) Regardless of whether you have cancelled an Order in accordance with Paragraph 6.3.2(a), if any Purchased Equipment which has been cancelled is delivered, you will, at your cost, return the Purchased Equipment to Vapour in an as new condition, in its original packaging and will ensure that the seal on any Software is not broken.
 - 6.3.3 **Delivery Of Purchased Equipment**
 - (a) You will provide Vapour with the name and contact details of at least one individual who is responsible for receiving the Purchased Equipment at the Site(s).
 - (b) Vapour will dispatch any Purchased Equipment for delivery to the applicable Site(s) as set out in any applicable Order, but Vapour will only deliver Purchased Equipment in the United Kingdom.
 - (c) You will take delivery of and sign for the Purchased Equipment on delivery and will write on the delivery note if:
 - (i) the quantity of packages delivered is different to the quantity shown on the delivery note; or

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- (ii) there is any damage to the packages.
- (d) You will separately notify Vapour if the circumstances set out in Paragraph 6.3.3(c) occur.

6.3.4 **Transfer of Title and Risk**

- (a) Title in the Purchased Equipment (except for the Intellectual Property Rights) will pass to you when you have paid for the Purchased Equipment in full.
- (b) Where Vapour delivers the Purchased Equipment, risk will pass to you on delivery of the Purchased Equipment, but you will not be liable for any loss or damage that is caused by Vapour's negligence.
- (c) Where Vapour does not deliver the Purchased Equipment, risk will pass to you when you take possession of the Purchased Equipment.

6.3.5 **Acceptance of Purchased Equipment**

Vapour will treat the Purchased Equipment as accepted when you take delivery or possession of the Purchased Equipment.

6.3.6 **Warranty**

- (a) During the period of 12 consecutive months following the delivery date (or any other period that Vapour advises you in a Notice), if you report to Vapour in accordance with the process set out in the Product Handbook that there is an Incident in the Purchased Equipment due to faulty design, manufacture or materials, or Vapour's negligence, Vapour will, or will arrange for the manufacturer or other third party to, replace or (at Vapour's option) repair the part affected by, or causing, the Incident free of charge, unless:
 - (i) the Purchased Equipment has not been properly kept, used or maintained in accordance with the manufacturer's or Vapour's instructions, if any;
 - (ii) the Purchased Equipment has been modified without Vapour's written consent;
 - (iii) the Incident is due to damage, interference with or maintenance of Purchased Equipment by persons other than Vapour or a third party authorised by Vapour;
 - (iv) the Incident is due to faulty design by you where the Purchased Equipment has been customised or integrated into your systems to your design; or
 - (v) the Incident is due to fair wear and tear.
- (b) If requested by Vapour, you will return the Purchased Equipment affected by an Incident to Vapour or to the manufacturer or other third party, in accordance with Vapour's instructions, for repair or replacement in accordance with Paragraph 6.3.6(a).
- (c) Vapour does not warrant that the Software supplied in accordance with the Contract is free from Incidents, but Vapour will remedy any defects that materially impair performance (where necessary, by arrangement between both of us) within a reasonable time.
- (d) Except where you have relied on Vapour's written advice, it is your responsibility to satisfy yourself that the Purchased Equipment is suitable for your needs.

6.3.7 **Software Licence**

On and from the installation date of any Purchased Equipment, you will comply with the provision of any Software licences provided with or as part of any Purchased Equipment.

6.4 **WEEE Directive**

- 6.4.1 You are responsible under Article 13 of the Waste Electrical and Electronic Equipment Directive 2012 ("**WEEE Directive**") for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any equipment supplied under the Contract that has become waste electrical and electronic equipment ("**WEEE**").
- 6.4.2 For the purposes of Article 13 of the WEEE Directive this Paragraph 6.4 is an alternative arrangement to finance the collection, treatment, recovery, recycling and environmentally sound disposal of WEEE.
- 6.4.3 You will comply with any information recording or reporting obligations imposed by the WEEE Directive.

6.5 **Consumer Regulations**

Where you place an Order acting for purposes that are related to your trade, business or profession, this is a business to business transaction to which the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 do not apply.

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6.6 Sale of Goods

The UN Convention on Contracts for the International Sale of Goods will not apply to the Contract.

7 SPECIFIC TERMS

7.1 Changes to the Contract

7.1.1 Vapour may amend the Contract at any time by giving at least 28 days' Notice before the change takes effect in order to:

- (a) comply with any legal or regulatory obligation, except where Vapour's compliance with that legal or regulatory obligation requires a shorter period of Notice;
- (b) change any of the Charges
- (c) protect the use of the Vapour Corporate Mark;
- (d) introduce new or improved Service Levels;
- (e) introduce new Meetings Online Service features;
- (f) withdraw or change Meetings Online Service features;
- (g) introduce process changes or change the technical specification of the Meetings Online Service including Meetings Online Service upgrades, provided that they are not to your material detriment;
- (h) maintain the integrity or security of the Meetings Online Service or Vapour Network;
- (i) change the processes and procedures described in the Documentation; or
- (j) improve clarity, or make corrections to typographical errors,

providing that the changes in Paragraphs 7.1.1(e) to 7.1.1(j) inclusive, will not unreasonably affect the Meetings Online Service.

7.1.2 Vapour will not require the signature of a new contract for the changes set out in Paragraph 7.1.1 and the changes will take effect at the expiration of the Notice or as otherwise set out in Paragraph 7.1.11.

7.1.3 Vapour may propose changes to the Contract at any time for matters not falling within Paragraphs **Error! Reference source not found.** by giving you 28 days' written Notice before the date the changes are proposed to take effect ("**Notice to Amend**").

7.1.4 Within 14 days of any Notice to Amend, you will provide Vapour Notice:

- (a) agreeing to the changes Vapour proposed, in which case those changes will apply from the proposed effective date; or
- (b) requesting revisions to the changes Vapour proposed, in which case both of us will enter into good faith negotiations and, if agreement is reached, the agreed changes will apply from the proposed effective date or any other date as may be agreed between both of us.

7.1.5 If we have not reached agreement in accordance with Paragraph 7.1.4(b) within 14 days either of us may terminate the Contract or Meetings Online Service or any part of the Meetings Online Service by giving the other 28 days' Notice of termination.

7.1.6 If:

- (a) you do not serve a Notice within the period set out in Paragraph 7.1.44; or
- (b) both of us have not reached agreement within 14 days of your Notice under Paragraph 7.1.4(b) and neither of us has terminated the Contract or Meetings Online Service or any part of the Meetings Online Service in accordance with Paragraph 7.1.55,

you will be treated as having accepted the changes and the changes will take effect from the proposed effective date.

7.2 Minimum Period of Service

7.2.1 At the end of the Minimum Period of Service, unless one of us gives Notice to the other of an intention to terminate the Meetings Online Service at least 90 days' before the end of the Minimum Period of Service both of us will continue to perform each of our obligations in accordance with the Contract.

7.3 Termination for Convenience

7.3.1 Either of us may, at any time after the Effective Date and without cause, terminate the Contract, any Service or any Order by giving 90 days' Notice to the other subject to the payment of applicable Termination charges.

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7.4 Customer Committed Date

- 7.4.1 If you request a change to the Meetings Online Service or any part of the Meetings Online Service, including any Purchased Equipment, then Vapour may revise the Customer Committed Date to accommodate that change.
- 7.4.2 Vapour may expedite delivery of the Meetings Online Service for operational reasons or in response to a request from you, but this will not revise the Customer Committed Date.

7.5 Intellectual Property Rights

- 7.5.1 Both of us agree that any Customer configuration data created by you and stored on the Meetings Online Service will be your property, and nothing in the Contract will be deemed to confer any assignment or licence of the Intellectual Property Rights in that data to Vapour or any third party.

7.6 Content

- 7.6.1 Where you provide Content for use in connection with the Meetings Online Service, you warrant that you have obtained in writing all necessary rights, clearances and permissions to allow you to use the Content including but not limited to any associated copying, storage, streaming or playing of the Content.
- 7.6.2 You will obtain any necessary licenses from the Performing Rights Society (“**PRS**”) Mechanical Copyright Protection Society (“**MCPS**”), Phonographic Performance Limited (“**PPL**”) or any other copyright holder and pay any applicable royalties or other charges to use any Content with the Meetings Online Service.
- 7.6.3 If the Content provided by you is the subject of a claim of infringement of any Intellectual Property Rights or breach of any licensing requirement or if Vapour reasonably believes that the Content is likely to become the subject of such a claim Vapour may, without notice, delete the Content or disable the streaming or playing of the Content.
- 7.6.4 You will indemnify Vapour against any Claim arising from any breach of Paragraphs 7.6.1 or 7.6.2.

7.7 Service Start Date

- 7.7.1 “**Service Start Date**” means for each Service, the date on which each Service is first made available to you.

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Part B – Service Delivery and Management

8 VAPOUR OBLIGATIONS

8.1 Service Delivery

Before the Service Start Date and, where applicable, throughout the provision of the Meetings Online Service, Vapour will:

- 8.1.1 provide you with contact details for the Service Desk;
- 8.1.2 comply with all reasonable health and safety rules and regulations and reasonable security requirements that apply at the Site(s) and which you have notified to Vapour in writing, but Vapour will not be liable if, as a result of any such compliance, Vapour is in breach of any of its obligations under the Contract;
- 8.1.3 provide you with a Customer Committed Date and will use reasonable endeavours to meet any Customer Committed Date;
- 8.1.4 set up the Meetings Online Service to enable you to commission your Customer on it; and
- 8.1.5 reject an Order if any information you submit is illegible, inaccurate, incomplete or incorrect.

8.2 Commissioning of the Meetings Online Service

On the Service Start Date, Vapour will;

- 8.2.1 provide you with a handover /setup document to enable you to commission the Service; and
- 8.2.2 advise you that the Meetings Online Service is ready for you to commission and is available for performance of any Acceptance Tests as set out in Paragraph 9.5.

8.3 During Operation

On and from the Service Start Date, Vapour will:

- 8.3.1 respond and use reasonable endeavours to remedy an Incident without undue delay and in accordance with the Service Levels in Part C of the Contract if Vapour detects or if you report an Incident with the Meetings Online Service;
- 8.3.2 from time to time monitor the profile of Calls made and received using the Meetings Online Service for potential fraudulent or bad faith use and may in the event of such Calls significantly affecting the Meetings Online Service take reasonable steps to prevent such use. Vapour will not monitor the Meetings Online Service without your prior permission;
- 8.3.3 use reasonable endeavours to provide you with advance notice of any scheduled downtime;
- 8.3.4 use reasonable endeavours to keep all scheduled downtime to the quietest time of the Meetings Online Service; and
- 8.3.5 occasionally, maintenance activity on the hosting infrastructure and the Avaya Equinox Meetings Online application will be required from time to time. For planned maintenance activity, Customer will be provided with a written notification email at least 1 week in advance of the planned date. For urgent maintenance activity, Customer will be provided with a written notification email of the proposed time and duration, including an advisory of the risks and potential outcome of not performing the maintenance activity. Avaya reserves the right to perform the urgent maintenance as notified. Maintenance is deemed urgent when there is a risk that degraded performance or other service impact will result if the maintenance is not conducted expeditiously.
- 8.3.6 Vapour and Avaya reserve a weekly maintenance window every first and third weekend of every month, from Saturday 6:00PM GMT through Sunday 4:00am GMT, to make changes to the Service, without prior notification to Partners or end Customers. Most changes should not be service affecting, however service disruptions during the maintenance window cannot be avoided in all situations..

8.4 The End of the Service

On termination of a Service by either one of us Vapour:

- 8.4.1 will de-activate the Service on the date that Vapour agrees with you;
- 8.4.2 after this time access will no longer be possible, and all data will be deleted and no longer retrievable;
- 8.4.3 may disconnect and remove any Vapour Equipment located at the Site(s); and

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8.4.4 will, if requested by you, agree an exit plan to enable you to transition to another supplier.

8.5 Before **The End of the Contract**

On termination of the Contract by either one of us, Vapour will terminate all Services and deactivate your access to all Portals.

9 YOUR OBLIGATIONS

9.1 Service Establishment Process

9.1.1 Vapour may reject a Order if any information submitted is inaccurate, incomplete or incorrect.

9.1.2 You will complete and maintain the direct debit mandate.

9.2 Ordering the Service

9.2.1 You will ensure that the information provided in the Order is accurate, correct and complete.

9.2.2 If, in Vapour's reasonable opinion, an Incident results from your failure to comply with Paragraph 9.2.1, the Service Levels set out in this Schedule will not apply.

9.2.3 Vapour will aim to advise you by email within three Business Days of receipt of your Order whether Vapour has accepted it.

9.3 Order Cancellation Prior to the Service Start Date

You will not be able to amend or cancel an Order before the Service Start Date if it has been accepted by Vapour as set out in Paragraph 9.2.3.

9.4 Service Delivery

Before the Service Start Date and, where applicable, throughout the provision of the Service by Vapour, you will:

9.4.1 provide Vapour with any information reasonably required without undue delay;

9.4.2 provide Vapour with access to any Site(s) during Business Hours, or as otherwise agreed, to enable Vapour to set up, deliver and manage the Meetings Online Service;

9.4.3 complete any preparation activities that Vapour may request to enable you to receive the Meetings Online Service or Service promptly and in accordance with any reasonable timescales;

9.4.4 provide Vapour with Notice of any health and safety rules and regulations and security requirements that apply at the Site(s);

9.4.5 prepare and maintain the Site(s) for the installation of Vapour Equipment and Purchased Equipment and supply of the Meetings Online Service;

9.4.6 provide a suitable and safe working environment for Vapour employees and anyone acting on Vapour's behalf at the Site;

9.4.7 ensure that the WAN and LAN protocols, applications and Customer Equipment that your Customers use are compatible with the Service;

9.4.8 ensure that the bandwidth and volume of each Profile stated in any Order is sufficient to meet your requirements, notwithstanding any guidance Vapour may provide;

9.4.9 appoint a Super Administrator;

9.4.10 ensure that:

(a) where Vapour is providing training, you have the Customer Equipment available;

(b) your appropriate nominated personnel attend the training courses; and

(c) you give a minimum of seven Business Days' Notice to Vapour of any change or cancellation of dates agreed for training. Your failure to provide such Notice will result in you being charged at the additional training day rates.

9.5 Acceptance Tests

9.5.1 You will carry out the Acceptance Tests for the Service within two Business Days after receiving Notice from Vapour in accordance with Paragraph 8.2 ("**Acceptance Test Period**").

9.5.2 The Service is accepted by you if you confirm acceptance in writing during the Acceptance Test Period or is treated as being accepted by you if you do not provide Vapour with Notice to the contrary by the end of the Acceptance Test Period.

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- 9.5.3 Regardless of what Paragraph 9.5.4 says, the Meetings Online Service Start Date will be the date on which a Service is first made available to you.
- 9.5.4 If, during the Acceptance Test Period, you provide Vapour Notice that the Acceptance Tests have not been passed, Vapour will remedy the non-conformance without undue delay and provide you Notice that Vapour has remedied the non-conformance.

9.6 During Operation

On and from the Service Start Date you will:

- 9.6.1 maintain a list of current Administrators and Users and immediately terminate access for any person who ceases to be an authorised Administrator or User;
- 9.6.2 deploy and configure Customer Equipment or Purchased Equipment for your Customer;
- 9.6.3 monitor and maintain any Customer Equipment connected to the Service or used in connection with a Service;
- 9.6.4 and will, ensure that any Customer Equipment that is connected to the Meetings Online Service or Service or that you use, directly or indirectly, in relation to the Service or Service is:
- (a) connected in accordance with the procedures set out in the Product Handbook;
 - (b) technically compatible with the Meetings Online Service or Service and will not harm or damage Vapour Equipment, the Vapour Network, or any of Vapour's supplier's or subcontractor's network or equipment or any other equipment; and
 - (c) approved and used in accordance with relevant instructions, standards and Applicable Law and any safety and security procedures applicable to the use of that Customer Equipment;
- 9.6.5 immediately disconnect any Customer Equipment or require your Customer to disconnect any of their Customer Equipment, where such Customer Equipment does not meet any relevant instructions, standards or Applicable Law;
- 9.6.6 procure that your Customer will ensure that all reasonable steps are taken to configure any Customer Equipment to prevent its being used in the commission of criminal offences including the making of fraudulent or bad faith Calls;
- 9.6.7 if Vapour gives you instructions which Vapour believes necessary for reasons of health, safety or the quality of the Meetings Online Service or the quality of any other telecommunications services Vapour provides to you or any other customer, communicate these to you as soon as reasonably practicable;

9.7 End of Service

- 9.7.1 On termination of any Service by either one of us, or upon the termination of the Contract, in accordance with Vapour's instructions, you will:
- (a) return or destroy any Avaya Software provided under the Contract that has been installed or downloaded at your or your Customers' premises, on any devices, or otherwise made available or accessible by you, as applicable;
 - (b) provide Vapour with a certificate signed by your authorised representative confirming that the requirements set out in Paragraph 9.7.1(a) have been met; and
 - (c) Vapour will have the right to disconnect and remove any Vapour Equipment located at the Site(s).

10 NOTIFICATION OF INCIDENTS

- 10.1 Vapour will take Incident reports from you through our Service Desk, in line with your customer support plan (CSP), only once you reasonably believe that the Incident is attributable to the Service and is not attributable to any non-Vapour Equipment.

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Part C – Service Levels

11 SERVICE LEVELS

11.1 Service Provisioning Service Level

11.1.1 Vapour will aim to provide the Meetings Online Service elements set out in the table below within the following target timescales but Vapour has no liability for any failure to meet them:

Type of Provision	Business Days
Service Establishment from acceptance by Vapour of a correctly completed CRF	15
Provision of a new Meetings Online Service Order, from acceptance by Vapour of a correctly completed Order	18

11.2 Incident Management Service Levels

11.2.1 Service Level Definitions

Priority 1, 2, 3 and 4 Incidents, excluding outages for Planned Maintenance or Emergency maintenance or Incidents that fall outside the Service Management Boundary, are as described below:

Incident Priority	Description
Priority 1 Incident, Critical Outage	Incidents that severely affect Call Processing affecting more than the greater of 20 and 20 per cent of a Customer's Users and requires immediate corrective action for example: (i) no Calls can be placed; or (ii) no Calls can be made.
Priority 2 Incident, Major Impact	Incidents that cause conditions that significantly affect system operation, maintenance, and administration and require immediate attention. The urgency is less than in critical situations because of a lesser effect on system performance, for example: (i) there are Call Processing Incidents affecting less than the greater of 20 and 20 percent of a Customer's Users; (ii) the system performance is degraded; or (iii) there is no reasonable workaround.
Priority 3 Incident, Minor Impact	Incidents which do not significantly impair the functioning of the Meetings Online Service and do not significantly affect the service to Customers or Users, for example: (i) individual User Incidents; (ii) Incident is non-critical or not affecting a Service; or (iii) there is a reasonable workaround.
Priority 4 Incident, Informational	Information needed concerning the Meetings Online Service's product capabilities, advice or basic configuration. This priority is restricted to "How To...." questions and therefore handled as non-service impacting, for example: (i) configuration questions; (ii) usability issue, documentation problem; or (iii) there is an easy workaround or no workaround is required.

11.2.2 Response, Restoration and Resolution Timeframes

Priority Level	Category	Response	Restoration (Call Processing)	Restoration (Other Applications)	Resolution	Measurement Period
Priority 1	Critical	≤60 minutes	3 hours	5 hours target	≤ 15 days	24 x 7 x 364
Priority 2	Major	≤60 minutes target	5 hours target	7 hours target	≤ 15 days target	24 x 7 x 364
Priority 3	Minor	≤ 6 hours target	12 hours target	24 hours target	≤ 60 days target	Mon - Fri 09:00 - 17:30

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Priority Level	Category	Response	Restoration (Call Processing)	Restoration (Other Applications)	Resolution	Measurement Period
Priority 4	Informational	≤ 24 hours target	n/a	90 per cent in 5 Business Days target	n/a	Mon - Fri 09:00 - 17:30

11.2.3 Regardless of what it says in the table above, where a Service uses the Managed Network Service Option which is not dual access, the target restoration time for a Priority 1 or 2 Incident caused by a failure of the Managed Network Service Option is five hours.

11.2.4 Vapour will aim to provide a solution within the target timeframes set out in the table above. For Priority 1 Incidents, and Priority 2 Incidents, Vapour will aim to provide a temporary solution to resolve the Incident while a permanent solution is developed.

11.2.5 Both of us may agree that Priority 1 Incidents may be downgraded to Priority 2 Incidents, and Priority 2 Incidents may be downgraded to Priority 3 Incidents, following the application of a temporary solution.

11.2.6 To meet the above targets, Vapour may require that the affected Customer's personnel be on Site and that remote access to the Service, or affected product or system be available to allow remote diagnostics and maintenance.

11.2.7 The clock will stop on a timeframe where Vapour requests reasonable assistance or further information from you in relation to an Incident, and will restart once the necessary assistance or information has been received by Vapour.

11.2.8 The Service Levels will apply to Qualifying Incidents traced to the Meetings Online Service or Service and not to Customer Equipment or your, or your Customers' network.

11.2.9 It is technically impracticable to provide a fault free Meetings Online Service and Vapour does not undertake to do so.

11.2.10 If Vapour fails to restore the Call Processing for a Priority 1 Qualifying Incident the Service Credits set out in Paragraph 11.3 will apply.

11.3 Service Credits

11.3.1 If Vapour does not restore the Service as a result of a Priority 1 Qualifying Incident within the timescales set out in the table below in any Measurement Period, you may request a Service Credit at the rate set out in the table below:

Service Level	Service Credit
>2 hours <4 hours	1.5%
>4 hours	2%

11.3.2 Service Credits will be the applicable percentage of the total net amount Vapour invoices you during the Measurement Period for ongoing monthly Charges for the affected Service.

11.3.3 The maximum aggregate Service Credit payable in respect of any Measurement Period is 3 per cent of the monthly Charges for that Measurement Period.

11.3.4 Service Credits will only become payable by Vapour for Priority 1 Qualifying Incidents that occur from the beginning of the second month following the applicable Service Start Date.

11.4 Meetings Online Service Availability for each Service Plan

11.4.1 Excluding outages for Planned Maintenance, Emergency Maintenance and Non-Qualifying Incidents, Vapour will aim to provide the target Service Levels of 99.95%.

11.4.2 Availability will be measured 24 hours a day, over a rolling 12 month period. Applications will be considered to be available unless Out of Service.

11.5 Planned Maintenance Service Level

11.5.1 Vapour will aim to provide the following notifications of Planned Maintenance that will impact Meetings Online Service Availability:

- (i) target 20 Business Days for Software updates and patches; and
- (ii) target 5 Business Days for all other Planned Maintenance.

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11.6 Vapour has no liability for failure to meet any target Service Levels.

12 REQUESTS FOR SERVICE CREDITS

- 12.1 You may request applicable Service Credits within 28 days of the end of the calendar month in which a Qualifying Incident occurred by providing details of the reason for the claim including:
- 12.1.1 the date and time at which the Qualifying Incident occurred;
 - 12.1.2 the Service affected;
- 12.2 Any failure by you to submit a request in accordance with Paragraph 12.1 will constitute a waiver of any claim for Service Credits in that calendar month.
- 12.3 Upon receipt of a valid request for Service Credits in accordance with Paragraph 12.1;
- 12.3.1 Vapour will issue you with the applicable Service Credits by deducting those Service Credits from your invoice within two billing cycles of the request being received; and
 - 12.3.2 following expiry or termination of the Contract where no further invoices are due to be issued by Vapour, Vapour will pay you the Service Credits in a reasonable period of time.
- 12.4 All Service Levels and Service Credits will be calculated in accordance with information recorded by, or on behalf of, Vapour.
- 12.5 The Service Levels under this Schedule will not apply:
- 12.5.1 during any trial period of the Meetings Online Service, or before charging has commenced;
 - 12.5.2 to any Incident not reported in accordance with Paragraph 10 ;
 - 12.5.3 to Incidents on the Customer Equipment outside of the Service Management Boundary;
 - 12.5.4 to Incidents with the Service due to your, or your Customers' action(s);
 - 12.5.5 to any failure of access from suspension of Meetings Online Service for breach of contract by you;
 - 12.5.6 to outages due to unscheduled upgrades requested by you;
 - 12.5.7 to outages due to applicable national laws, customs, or regulations;
 - 12.5.8 in the event of a Non-Qualifying Incident;
 - 12.5.9 where an outage occurs during or as a result of you implementing a back-up, patch, update or upgrade;
 - 12.5.10 to any Incidents caused by you due to:
 - (i) unavailability of your personnel in order to determine or isolate the Incidents including **"Customer Pending Status"**; or
 - (ii) Incidents caused by your or your Customers' applications, equipment or supplier;
 - 12.5.11 to unavailability of the Meetings Online Service as a result of problems with environmental conditions (power, climate, housing, switch off) at your, or your Customers' Sites;
 - 12.5.12 to the introduction of unauthorised changes to Vapour Equipment (if applicable) or Customer Equipment failure;

Part D – Defined Terms**13 DEFINED TERMS**

These defined terms will take precedence for the purposes of this Schedule:

- **Virtual Meeting Room (VMR)** – A virtual meeting space for multi-party video collaboration.
- **End User** – A credentialed VMR owner. An End User has scheduling access for VMR and management login credentials.
- **Participant** – An End User or non-credentialed guest who uses a VMR for a meeting space. A Participant occupies one Seat.
- **Seat** – An allocation of concurrent user capacity of the video service. From a *capacity* standpoint, 1 Seat = 1 Participant = 1 device.
- **Customer or end Customer** – A company buying the service for its End Users from Partner. It is possible that a Customer will buy a single Seat. In such a case, Customer and End User may mean the same.
- **Customer Data** – Electronic data, text, audio recordings or other data that is transmitted, stored, retrieved or processed in, to or through the Services.