

## Voca Software Solutions Limited – Terms & Conditions

WHEREAS:

1. Voca Software Solutions Limited (“Voca Solutions”) is in the business of providing certain communications products, services and solutions;
2. The Customer wishes to obtain and use such services;
3. Voca Solutions agrees to provide the services to the Customer and its End Users subject to these terms and conditions.

### **1. Definitions**

In this Agreement, which includes any attached Schedules and Appendices, the following phrases shall bear the following meanings:

“Call” mean means a signal, message or communication which is silent, spoken or visual on each line that Voca Solutions agrees to provide to Customer under this Agreement.

“Call Level” means the sum of money that Customer agrees with Voca Solutions, that it expects to spend on Call Charges during the period covered by Customer’s bills.

“Charges” mean the charges payable by Customer to Voca Solutions in respect of the Services, as further detailed overleaf or in the Schedule or Price List, including without limitation one off fees and recurring fees.

“Commencement Date” means the date that the Service is installed and operational and, in the case of a Service involving multiple Customer’s Premises, the date that the Service is installed and operational at the final Customer’s Premises.

“Customer” means the person, company or organisation detailed overleaf who orders the Services including its officers, employees, sub-contractors, agents, successors and assigns.

“Customer’s Line” means a connection to Voca Solutions Network.

“Customer Number(s)” means the numbers provided by the Customer or allocated by Voca Solutions to be used in the provision of the Services, as specified in the Schedule or otherwise communicated to Customer by Voca Solutions.

“Customer’s Premises” means the place where the Services are or will be provided.

“Effective Date” means the final date on which the parties have executed this Agreement.

“End User Services” means those services that Customer intends to offer to its End Users using the Services.

“End User Communications” means the communications made by an End User which are connected, terminated and/or transferred using the Services.

“End User” means the end customer(s) of Customer who wishes to access and use the End User Services from time to time.

“Equipment” means any device or other equipment or ancillary facilities the Customer or any End User may from time to time use to make and/or receive Calls or End User Communications to or from the Voca Solutions System so as to access and/or provide the End User Services to End Users.

“Failure of the Services” means the continuous total loss of the ability to make or to receive Calls or the continuous total loss of a related service.

“Fault” means a material defect, fault or impairment in the Services, which causes an interruption in the provision of those Services.

“Force majeure” means any event outside the reasonable control of either party, including without limitation lightning, flood, or exceptionally severe weather, line failure, fire or explosion, civil disorder, war, or military operations, national or local emergency, anything done by government or other competent authority, any action by any network provider or industrial disputes of any kind, (including those involving our employees).

“Initial Term” means a term commencing on the Effective Date and expiring 36 months following the Commencement Date unless automatically renewed.

“Main Telephone Socket” means the point where Customer’s Equipment is connected to the Voca Solutions Network which is called the Network Termination Point under the General Authorisation regime.

“Voca Solutions Network” means any Voca Solutions provided telecommunications network.

“Voca Solutions System” means the communications system and network owned and/or operated by Voca Solutions, including the Voca Solutions Network, over which the Services are provided.

“Price List” means the applicable price list in respect of the Services published from time to time and available from Voca Solutions upon written request.

“Rental” means the rental of any Equipment by the Customer from Voca Solutions subject to these terms and conditions;

“Rental Fees” means the sum payable by the Customer for the Rental as determined under Clause 6 of these Terms and Conditions.

“Services” means the service(s) to be provided by Voca Solutions to Customer, as described overleaf or in the Schedule.

“Service Levels” means any agreed service levels to which the Services are to conform as set out in the proposal.

“Software” means the software programs and each and every component amended from time to time, including all developments, versions or releases whether existing now or becoming available in the future, and documentation, which may be supplied by Voca Solutions in connection with the provision of the Services;

“Third Party Systems” means any third party communications systems to which the Voca Solutions System is connected in relation to the provision of the Services.

“Working Day” means Monday to Friday excluding Public Holidays.

## **2. Provision of Services**

Voca Solutions will make the Services available to Customer with effect from the Commencement Date. Voca Solutions aims to provide Customer with the Services by the date agreed with Customer unless Voca Solutions is prevented from doing so through any act or omission of Customer or any event of force majeure. Voca Solutions cannot guarantee that the Services will be free of faults or interruptions, timely or secure to the extent the Services may be affected by things Voca Solutions cannot control, such as lack of network capacity, physical obstructions, atmospheric conditions or acts or omissions of Third Party Systems. However, to the extent that Service Levels have been agreed, Voca Solutions shall use all reasonable endeavours to comply with such Service Levels. The Services do not include any phones or other equipment that Voca Solutions may supply to Customer under a separate agreement.

## **3. Voca Solutions’ Obligations and Rights**

### 3.1 Voca Solutions shall:

- (a) make available the Customer Number(s);
- (b) correct any failure in the Services attributable to the Voca Solutions System in accordance with the Service Levels;
- (c) keep all information collected by Voca Solutions from End User Communications strictly confidential subject only to such limited disclosures as are strictly necessary for the purposes of the provision of the Services to the Customer, and/or which Voca Solutions is required to make pursuant to any statute or regulation or the order of any court with competent jurisdiction and only use such information strictly in accordance with the terms of this Agreement;
- (d) be responsible for the operational requirements of any and all statutory provisions and regulations relating to the operation of the Voca Solutions System, save that where such provisions apply to the End-User's use of the Voca Solutions System;
- (e) be responsible for obtaining and maintaining any necessary licences required to operate the Voca Solutions System;
- (f) provide Software revision upgrades to the Customer, relating to the Services, free of charge basis unless the Customer agrees to changes that require additional functionality being provided;
- (g) use the reasonable skill and care of a competent communications service provider;
- (h) where the Customer receives outgoing voice telecommunications Services, put Customer's name, address and the phone number for the Services in The Phone Book for Customer's area and make Customer's phone number available to the directory enquiries service as soon as it can. However, Voca Solutions will not do so if Customer asks it not to.

3.2 Voca Solutions may have to take certain actions from time to time that could affect the Services, as specified below. If Voca

Solutions has to interrupt the Services it will restore them as quickly as it can.

Voca Solutions may have to:

- (a) change the code or phone number or the technical specification of the Services for operational reasons;
- (b) interrupt the Services for operational reasons or because of an emergency;
- (c) give Customer instructions that Voca Solutions believes are necessary for health or safety, or for the quality of the Service that Voca Solutions supplies to Customer or to Voca Solutions' other customers.

3.3 Voca Solutions shall be entitled to:

- (a) monitor and/or record calls made to or by Voca Solutions in order to service your requirements under these Terms and Conditions .
- (b) use the information Voca Solutions has about Customer and Customer's use of the Services in accordance with Voca Solutions' privacy policy.
- (c) process Customer's billing data and information about Customer's use of the Services (this includes information about Customer's bill size, the numbers Customer calls and the times Customer calls) for marketing Voca Solutions' own telecommunications products and services. This will be handled in accordance with Voca Solutions' privacy policy.

#### **4. The Customers Obligations**

The Customer shall:

(a) provide Voca Solutions in a timely fashion with any information it requires and requests in respect of the End User Services and the End Users;

(b) not use or allow anyone to use, the Services or the Voca Solutions System in a manner or for a purpose which is in Voca Solutions' reasonable opinion unlawful, obscene or offensive or in a manner which may cause damage to the Voca Solutions System or any Third Party System;

(c) not attach to the Voca Solutions System or to any Third Party System any equipment not approved for connection to a telecommunication system pursuant to relevant telecommunications laws and regulations, (d) notify Voca Solutions on Voca Solutions' dedicated telephone number as soon as is practicable after the Customer becomes aware of any fault in the Services;

(e) submit one week in advance quarterly traffic profiles of predicted End User Communications and notify Voca Solutions with as much notice as practicable in advance of any likely changes to such traffic profiles;

(f) in respect of outgoing communication Services, only connect phones, extension wiring, sockets or other equipment to the Voca Solutions Network using a Main Telephone Socket, unless Voca Solutions agrees otherwise. Voca Solutions may end any such agreement after giving Customer reasonable notice;

(g) use Equipment with the Voca Solutions Network in a way that meets the relevant standards and Customer's license. If Equipment does not meet those standards or Customer's licence, Customer must immediately disconnect it, or allow Voca Solutions to do so at Customer's expense. If Customer asks Voca Solutions to test Equipment to make sure that it meets those standards or Customer's licence Customer will be charged for the cost of doing this;

(h) Provide a suitable place and conditions for any equipment Voca Solutions may have to place equipment on Customer's

Premises to provide Customer with the Services. If Voca Solutions has to supply equipment that needs a continuous mains electricity supply and connection points, Customer must provide them where Voca Solutions needs them at Customer's own expense;

(i) Prepare the Customer's Premises before Voca Solutions arrives according to any instructions that Voca Solutions gives Customer. For the avoidance of doubt, when Voca Solutions' work is completed Customer will also be responsible for putting items back and for any necessary re-decorating.

(j) If Voca Solutions' engineers have to enter the Customer's Premises, let them do so as long as they show their Identity Card. Voca Solutions will meet Customer's reasonable requirements about the safety of people on the Customer's Premises and Customer must do the same for Voca Solutions;

(k) be responsible for obtaining and maintaining any necessary licences, permits or clearances required to provide the Customer Services in any jurisdiction and where Voca Solutions needs someone else's permission to cross or put its equipment on their premises, Customer must get that agreement for Voca Solutions and make any necessary arrangements;

(l) Ensure that nobody uses the Services:

(i) To make offensive, indecent, menacing, nuisance or hoax calls;

(ii) Fraudulently or in connection with a criminal offence and Customer must make sure that this does not happen. If a claim is made against Voca Solutions because the Services are misused in this way, Customer must reimburse Voca Solutions in respect of any sums Voca Solutions is obliged to pay or any costs that Voca Solutions incurs.

(m) comply with all national or international laws, regulations or provisions relevant for the performance of this Agreement, in



particular with respect to its contractual and consumer relationships with End Users.

(n) except as otherwise authorised under this Agreement, not resell or otherwise make available the Services to any third party; (p) have no right to sell or to agree to transfer the Customer Number provided to Customer for use with the Services and Customer must not try to do so;

(o) If Customer wants a special entry in The Phone Book, let Voca Solutions know. Where Voca Solutions agrees to a special entry Customer must pay an extra charge and sign a separate agreement for that entry.

(p) at the end of the Rental Term, prior to collection in accordance with paragraph (r) above, remove all Customer data from the Equipment. Voca Solutions accepts no responsibility for any Customer data which remains on the Equipment following the end of the Rental Term.

## **5. Voca Solutions System Interruptions and Service Levels**

5.1 Voca Solutions shall have no responsibility for Failure of the Services as a result of any defect in Equipment or any Third Party System. Subject to any agreed Service Levels, Voca Solutions does not warrant that the Services will be continuous or fault free and takes no responsibility for any failure on any Third Party System that affects Voca Solutions' performance of the Services.

5.2 Voca Solutions will work on any Fault that is reported to it according to the repair service Voca Solutions has agreed to provide to Customer. When Voca Solutions agrees to work on a Fault outside the hours covered by the repair service that Voca Solutions provides to Customer, Customer must pay Voca Solutions any extra charges that Voca Solutions incurs.

5.3 The Customer will obtain and comply with any permission, licence, consent, registration and approval necessary for installation, operation and maintenance of its telecommunications systems and in respect of the installation and operation of any Equipment and any End User Services provided by the Customer.

5.4 Voca Solutions shall be entitled to interrupt the availability of the Services where necessary with at least 24 hours notice for operational testing, maintenance, monitoring, preventive or curative repair or adjustment to be carried out either with respect to the Voca Solutions System as a whole or part thereof and/or where necessary in Voca Solutions' reasonable opinion to preserve the integrity of the Voca Solutions System or any part thereof or the overall quality of the Services.

5.5 Voca Solutions shall be entitled to interrupt the availability of the Services if the Customer is in material breach of its obligations hereunder but only after having given notice specifying the alleged breach to the Customer.

5.6 Voca Solutions shall use its reasonable endeavours to correct as soon as is reasonably practicable any Fault in or Failure of the Services notified by the Customer, in accordance with the Service Levels. For the purposes of this Clause 5 a Fault shall be deemed to have commenced upon its notification to Voca Solutions or of Voca Solutions otherwise becoming aware of the Fault.

5.7 For the purposes of this Clause 5 Voca Solutions shall not be responsible for Faults or Failures of the Services that are attributable to the act or omission of the Customer or Third Party Systems, force majeure events, Services suspensions made pursuant to this Clause 5 or the failure or malfunction of Equipment.

5.8 The Customer shall pay all reasonable costs incurred by Voca Solutions in investigating and remedying any Fault or Failure of the Services that is attributable to:

(a) the negligence, act, omission, breach, or fault of the Customer or its agents or End Users, or

(b) the failure or malfunction of Equipment;

or where no fault is found after investigation by Voca Solutions.

## **6. Charges and Payment**

6.1 All Charges shall be invoiced by Voca Solutions to Customer in Pounds Sterling, at the frequency set out overleaf or in the Schedule (monthly billing is the default), and shall be payable by Customer, without deduction or set-off, within 15 days of the date of an invoice from Voca Solutions. Voca Solutions will send Customer its first bill shortly after the Commencement Date and will send Customer further bills in accordance with the agreed billing frequency, but Voca Solutions may send Customer a bill at any time. Voca Solutions will send bills to the address that the Customer asks it to.

6.2 All payments will be made only by direct debit from the Customer's nominated bank account and the Customer will complete a direct debit mandate at the time of ordering the Service. This applies whether Customer uses the Services or someone else does. If Customer cancels or ceases to use its direct debit, or a direct debit remains unpaid or Customer pays its bill by any method other than by direct debit, Customer is liable to pay a surcharge (currently £10.00) on each monthly invoice until the direct debit is re-instated by Customer.

6.3 Voca Solutions will calculate any charges for Calls using the details recorded by Voca Solutions' billing system.

6.4 If someone makes a Call without Customer's knowledge from Voca Solutions' side of the Main Telephone Socket, Customer will not have to pay for the Call, unless Voca Solutions proves that Customer could have taken reasonable steps to prevent the Call being made.

6.5 All Charges will automatically commence to be billed with effect from the Commencement Date. Connection and one off charges will be payable in one lump sum with effect from such date and all rental charges will be billed in advance and all usage based charges in arrears. The rental will depend on how Voca Solutions classifies the Customer's Line. The classifications are explained in Voca Solutions' Price List. If Voca Solutions supplies Customer with temporary Services, Customer may have to pay the rental in advance for the whole period that Customer wants to receive the Services.

6.6 Where the parties have agreed the Charges are fixed and certain for the Initial Term, Voca Solutions shall not be entitled to increase its Charges during such term.

In all other cases Voca Solutions shall be entitled to increase its charges to the Customer upon 30 days written notification. Where the Charges are increased by more than 25% in aggregate Customer may serve written notice of termination on Voca Solutions, such termination to take effect 30 days from the date of such Customer notice subject to payment by Customer of all outstanding and accrued Charges up to the effective date of termination.

6.7 All Charges are exclusive of value added tax, sales tax, excise tax, gross receipts tax, withholding tax and any similar tax that may be applicable thereto and Customer agrees to pay all such applicable taxes.

6.8 Failure by Customer to pay any Charges in accordance with this Agreement shall entitle Voca Solutions without prejudice to its other rights and remedies under this Agreement to:-

6.8.1 charge interest on a daily basis from original due date at the rate of 2 percentage points above the Barclays Bank Base Rate in the UK in force from time to time; and/or

6.8.2 suspend, disconnect or terminate the provision of the Services, having given 14 days written notice of its intention to do so, and Customer having failed to remedy its payment default

during that time. If this is necessary the following conditions may apply in respect of outgoing communications Services:

(a) Normal monthly rental will continue to be charged during any period of disconnection;

(b) Customer will be charged a fee for reconnection to Voca Solutions Services, which is £150 per affected line, subject to VAT;

(c) If Outgoing Call Barring is placed on Customer's Line because Voca Solutions has not received payment by the due date, a payment will be required in advance before Outgoing Call Barring is removed.

6.9 If Ofcom implements a ruling which has the effect of reducing any shared revenue received by Voca Solutions from any Customer Number used as part of the Services, Voca Solutions will be entitled to increase its Charges by giving as much written notice to the Customer of such increase as is practicable, and in any event not less than 14 days.

6.10 Voca Solutions may ask Customer for a payment before one is normally due. This will not be more than the connection charge and rental for the Initial Term, except in circumstances where Voca Solutions sends Customer a bill because it has exceeded its Call Level.

6.11 Voca Solutions may ask for a deposit at any time, as security for payment of Customer's bills if Voca Solutions thinks it is reasonable for it to do so.

6.12 Voca Solutions may decide a Call Level is no longer necessary. Voca Solutions will inform Customer of this.

6.13 The Rental Fees will be determined by reference to the length of the Rental Term, the type and quantity of Equipment, the Price List and any additional items which may be included in the Rental, as set out in the relevant order. Payment may be made in full or in part, as set out in the relevant order, at the

commencement of the Rental Term. All payments to be made in part will take the form of regular monthly payments.

At the end of the Rental Term, on the agreed collection date the Customer shall ensure that all of the Equipment is available for collection by the Company.

## **7. Warranties and Limitations of Liability**

7.1 Nothing in this Agreement shall exclude or restrict the liability of either party for personal injury or death resulting from the negligence of that party or of its employees acting in the course of their employment, or for fraudulent misrepresentation.

7.2 Neither party shall have any liability to the other party (whether in contract, tort or otherwise) for consequential or indirect loss or damage of any nature including but not limited to loss. Corruption or recreation of data or any form of loss of revenue, profit, business or anticipated savings. Each party shall be liable to the other party for direct loss or damage under or in connection with this Agreement for an amount not exceeding the Charges paid in the 12-month period preceding the incident that has given rise to the liability.

7.3 All implied terms conditions or warranties (whether statutory or otherwise) are hereby excluded. The provisions of this Clause 7 shall continue to apply even when this Agreement is terminated or has expired.

7.4 Subject always to Clause 7.2. each party (the 'Indemnifier') shall indemnify and hold harmless the other (the 'indemnified') against all claims, damages, losses, liabilities, costs and expenses arising from:

(a) claims by third parties in respect of damages suffered by such third parties as a result of a breach by the Indemnifier of this Agreement or of a statutory duty;

(b) (in the case only of the Customer being the Indemnifier) claims by third parties in any way connected with the use of the Services;

(c) claims by third parties in respect of infringement of copyright, defamation libel or invasion of privacy (or any allegation thereof) arising in the course of the operation of and use of the Services:

(d) (in the case only of the Customer being the Indemnifier) claims by End Users or any other third parties in any way connected with the quality or content of any End User Services;

(e) infringement by the Indemnifier of any other third party right;

(f) (in the case only of the Customer being the Indemnifier) damage caused to the Voca Solutions System by the Customer or the End User.

## **8. Term and Termination**

8.1 This Agreement becomes effective from the Effective Date and except as provided hereunder, will continue in full force and effect for the Initial Term. Thereafter, this Agreement shall automatically renew for successive terms of 36 months duration ("Renewal Terms") unless a party gives not less than 6 months written notice of termination of this Agreement to the other party prior to the expiry of the Initial Term or any Renewal Term. Subject to Clauses 8.3, 8.4 and 8.5, termination of this Agreement before the expiry of the Initial Term or Renewal Term will render the Customer liable to pay all Charges up to the end of the relevant term ("Early Termination Charges"), unless otherwise agreed by Voca Solutions. In the event that usage-based services, such as voice calls, are terminated the any Early Termination Charges in respect of the same will be based on the average of such Charges over the previous 12-month period.

8.2 Subject to Clause 8.5, all Services at Customer's Premises shall be contracted for an initial period of 36 months from the Commencement Date of the Service at that Customer's Premises ("Site Term"). Thereafter, the Site Term shall automatically renew for successive terms of 36 months duration ("Site Renewal Terms") unless a party gives not less than 6 months written notice of termination of the relevant Service to the other party prior to the expiry of the Site Term or any Site Renewal Term. Subject to Clauses 8.3, 8.4 and 8.5, termination or cancellation of any Service at a Customer's Premises before the expiry of the Site Term or Site Renewal Term will render the Customer liable to pay all Charges up to the end of the relevant term ("Early Termination Charges"), unless otherwise agreed by Voca Solutions. In the event that usage-based services, such as voice calls, are terminated then any Early Termination Charges in respect of the same will be based on the average of such Charges over the previous 12-month period.

8.3 Either party may terminate this Agreement forthwith upon written notice if;

(a) the other party is in breach of any material term or condition of this Agreement, and has failed to remedy such breach within 30 days of the non-breaching party's notice;

(b) the other party is insolvent or has become bankrupt, entered into voluntary or involuntary liquidation, has a receiver, trustee or manager appointed in respect of all or any of its assets, or has a bankruptcy order presented or winding up petition or order filed; or

8.4 Voca Solutions may terminate this Agreement forthwith upon written notice if any licence or authorisation required by Voca Solutions to provide the Services is revoked.

8.5 In respect of outgoing voice communications Services only, the supply of the Services can be terminated by:

(a) in the case of a trial service only Customer's written cancellation on or before the 30th day of the agreed trial period



(trial period offers are strictly limited to one per contract). In the case of an early termination Customer is liable for the full costs of the trial including line rental and all calls made during this period; or

(b) Voca Solutions giving to the Customer 30 days prior written notice of termination at any time.

8.6 In respect of outgoing voice communications Services only:

8.6.1 If Voca Solutions gives Customer notice, Customer must pay rental up to the end of that notice. If Customer gives Voca Solutions notice, Customer must pay rental and Early Termination Charges calculated in accordance with Clauses 8.1 and 8.2 for the remainder of the term of the Service;

8.6.2 Customer must pay Voca Solutions a standard cancellation charge of £150 per Customer Line. If Customer has participated in a free or reduced rate ISDN Install or other promotions or offers giving discounts, Customer is liable to repay the full costs of that install in accordance with the pre-offer Price List or conditions attached to that promotion or offer;

8.6.3 If Customer has paid any rental for a period after the end of this Agreement, Voca Solutions will either repay it or put it towards any money Customer owes Voca Solutions.

8.7 Termination of the Agreement shall be without prejudice to either party's rights then accrued.

8.8 If Customer is contracted to a minimum call spend and at the end of the year it has not met the spend, then Customer will be liable to pay 20% of the difference between what has been spent and what should have been spent under this Agreement. This also applies should Customer terminate its contract with Voca Solutions before the end of the Initial Term.

8.9 Where Voca Solutions provides a virtual number Service to the Customer whereby Voca Solutions has ported Customer's telephone number/s onto the Voca Solutions Network as part of

the Service it is the sole responsibility of the Customer to reinstate the number onto a telephone line following termination of the Service and Voca Solutions accepts no liability for the Customer's failure to do so.

8.10 The agreed term of the Rental ("Rental Term") will be set out in the relevant order and in default of the same will be for a period of 36 months.

8.11 If the Customer wishes to extend the Rental Term they may do so at any time prior to the end of the Rental Term. The Customer must contact Voca Solutions to arrange such an extension. Voca Solutions shall use its best and reasonable endeavours to satisfy requests for extensions but cannot guarantee the availability of the Equipment to the Customer beyond the end of the pre-existing Rental Term.

8.12 Voca Solutions reserves the right to recall the Equipment immediately at any time. In the event that the Company exercises this right the Customer will be reimbursed for any and all days remaining in the Rental Term or will be issued immediately with replacement Equipment of the same type or of the closest type thereto at no additional cost. If the Equipment is not returned to Voca Solutions on request the Customer shall be deemed to have authorised Voca Solutions to enter the Premises and use any means necessary to recover the Equipment. The Customer shall be charged for any costs associated with such recovery.

## **9. Force Majeure**

9.1 Neither party shall be responsible for failure to carry out any of its duties under this agreement to the extent to which this is caused by an event of force majeure provided that it shall take all reasonable steps to overcome and mitigate the effects of the force majeure event.

9.2 The Charges for the Services affected by a force majeure shall be reduced or waived by an equitable amount to be agreed between the parties to reflect the extent and standard to which the affected Services are being provided.

9.3 If a force majeure which results in the non-delivery of the Services (or a material part thereof) continues for more than 30 days, either party may terminate this Agreement by giving a written notice to the other party.

## **10. Notices**

10.1 Unless otherwise provided herein all notices and communications concerning this Agreement shall be addressed to the other party at the address set out overleaf or such other address as either party may designate from time to time in writing to the other party.

10.2 Any notice shall be in writing and shall be sent to the address of the party to be served as above written. All notices shall be delivered by hand, registered, or certified post or facsimile. Notices shall be deemed to have been received; (i) if delivered by hand, upon safe delivery, (ii) if sent by post, 72 hours after the envelope containing such notice was posted, or (iii) if sent by facsimile, when the transmission of the facsimile is complete, Notices sent by facsimile shall be confirmed by letter.

## **11. Assignment**

No rights or obligations of either party may be otherwise assigned or transferred to any other third party without the other party's prior written consent, except that either party may assign or transfer (on giving written notice to the other party) all of its rights and obligations under this Agreement to another undertaking in the same group of undertakings as it.

## **12. Intellectual Property and Developments**

12.1 Voca Solutions hereby grants to Customer for the duration of this Agreement, non-exclusive and non-transferable licences to use Software for the purposes of using the Services.

Customer acknowledges that the provision of Software is made by Voca Solutions strictly for use in conjunction with the Services and Customer agrees not to reproduce, copy (except for the purpose of retaining a back-up copy), alter, modify, or add to the Software or any part thereof, nor to attempt or to allow a third party to attempt to reverse engineer, translate or convert the Software from machine readable to human readable form, except as permitted by applicable law.

12.2 The Customer hereby acknowledges that all intellectual property rights in and to the Voca Solutions System (and the platforms included within the Voca Solutions System) and the Services (whether existing now or in the future) belong entirely and exclusively to or are licensed to Voca Solutions. In particular, the Customer does not acquire any rights in the source code or object code of the Software.

12.3 Each party grants the other a non-exclusive royalty-free licence to copy and use that party's logos, name, trademarks and service marks ('Identifying Marks') in fulfilment of its obligations hereunder for the duration of and in accordance with the terms of this Agreement. Each party acknowledges that the other's Identifying Marks are respectively the exclusive property of the other party and that they will not assert any claim of ownership to the other party's Identifying Marks or to the goodwill or reputation connected with the other party's Identifying Marks. Neither party shall incorporate the Identifying Marks of the other in any marketing or other material without the prior written approval of the other party. Upon termination of this Agreement both parties shall, as soon as practicable remove and cease to use any Identifying Marks of the other party from any

marketing or promotional literature to which the other party had previously consented.

12.4 The Customer acknowledges that the intellectual property rights that belong entirely and exclusively to Voca Solutions include without limitation all voicework and music that is used as part of the Services. The Customer is prohibited from using, playing or replicating any such material upon the termination or expiry of this Agreement. Should the Customer wish to continue using any such voicework or music it must obtain a paid licence from Voca Solutions to do so. This provision will survive the termination of this Agreement

### **13. Confidentiality**

Each party shall, procure that its employees and agents shall, both throughout the Term and thereafter for a period of 1 year keep confidential the provisions of this Agreement together with all other information disclosed on a confidential basis by the other party hereunder and shall not disclose the same to any person except when acting under a court order. Unless otherwise specified in writing, all information regarding the performance of the Voca Solutions System or the Services or the business affairs of the parties and of the details of End Users (including details relating to any End Users use of the Services and/or End User Communications) shall be regarded as confidential.

### **14. Miscellaneous**

14.1 If Customer asks Voca Solutions to make any change to the Service Voca Solutions may ask Customer to confirm its request in writing. If Voca Solutions agrees to a change, this Agreement

will be amended when Voca Solutions confirms the change to Customer in writing.

14.2 Voca Solutions can change the conditions of this agreement including our charges at any time. Voca Solutions will publish any changes on [www.myvoca.co.uk](http://www.myvoca.co.uk) at least 21 days before it takes place. Voca Solutions will inform Customer with its next bill if there has been or will be a material change.

14.3 Headings contained herein are provided for convenience and reference only and in no way affect or limit the interpretation, contents or terms of this Agreement.

14.4 This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same document,

14.5 The parties do not intend to confer any rights on a third party and do not intend that any third party should have any right to enforce this agreement. Without limiting the above, a person who is not a party to this agreement has no rights under the Contracts Rights of Third Parties Act 1999 or otherwise to enforce any rights or remedies available to a third party which exist or are available under that Act or otherwise.

14.6 Each party to this Agreement agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

14.7 The Customer is an independent customer and this Agreement does not, nor is intended to, constitute a partnership between the parties or make the Customer the agent of Voca Solutions or Voca Solutions the agent of the Customer or otherwise create any relationship of employment between the parties. Neither party shall have the authority to assume or create any obligation on behalf or in the name of, or binding upon the other party.

14.8 In the event that a provision of this Agreement is held to be invalid, inapplicable or unenforceable such provision shall be replaced by one that comes closest to the intention of the parties and the remaining provisions of this Agreement shall be unimpaired.

14.9 No relaxation, delay or indulgence by either party in enforcing any right under this Agreement shall operate as a waiver thereof. No waiver of any term of this Agreement by any party shall be effective unless such waiver is explicit, in writing and signed by the waiving party. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach or waiver of the provision itself.

14.10 This Agreement contains the entire agreement and understanding of the parties and supersedes all prior communications, representations, agreements, understandings or arrangements either oral or written relating to the subject matter of this Agreement. No agreement or understanding or extension of this Agreement shall be binding upon either party hereto unless in writing which specifically refers to this Agreement signed by fully authorised officers or representatives of the respective parties and the provisions of this Agreement not specifically amended thereby shall remain in full force and effect.

14.11 This Agreement is governed by and subject to the law of England and Wales and each party submits to the exclusive jurisdiction of the English courts.

## **15. Data Protection**

15.1 In this Clause 15 the following expressions bear the following meanings:

“Data Breach” means any breach of security, breach of the Data Privacy Laws or breach of Voca Solutions’ obligations under this Agreement or any accidental or unlawful destruction, loss,

alteration, unauthorised disclosure of, or access to, any Customer or its Client's Data;

"Data Controller" has the meaning given to that term (or to the term 'controller') in Data Privacy Laws;

"Data Processor" has the meaning given to that term (or to the term 'processor') in Data Privacy Laws;

"Data Privacy Laws" means all statutes, laws, secondary legislation and regulations pertaining to privacy, confidentiality and or data protection of Personal Data or corporate data, including (but not limited to) the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), E-Privacy Regulation, General Data Protection Regulation (GDPR, EU 2016/679) and any relevant national laws implementing Directives 95/46/EC, 2002/58/EC 7 97/66/EC or General Data Protection Regulation (EU) 2016/679) to the extent applicable to this Amendment Agreement and the relationship between the Parties;

"Data Protection Losses" means all liabilities and other amounts, including (without limitation) all: costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); loss or damage to reputation, brand or goodwill; administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; compensation paid to a Customer (including compensation to protect goodwill and ex gratia payments); and costs of compliance with investigations by a Supervisory Authority; the costs of loading Customer Data, to the extent that the same are lost, damaged or destroyed, and any loss or corruption of Customer Data (including the costs of rectification or restoration of Customer Data) to the extent permitted by applicable law;



“Data Subject” has the meaning given to that term in Data Privacy Laws;

“Data Subject Request” means a request made by a Customer or its clients to exercise any rights of a data subject;

“Client(s)” means the end customers or a person about whom the Customer processes Personal Data in relation to providing services;

“Customer Data” means Personal Data received about or relating to Customers or their Clients;

“Customer(s)” means a current, past, future or potential Voca Solutions Customer; and/or and employee, member of staff or contractor of the Customer (“Staff”) where Voca Solutions is providing services in respect of such Staff or otherwise received Customer Data relating to such Staff through the course of providing the Services;

“Personal Data” has the meaning given to that term in Data Privacy Laws;

“Processing” has the meaning given to that term in Data Privacy Laws (and related terms such as Process have corresponding meanings);

“Processing Instructions” means the instruction given to the processor (Voca Solutions) by the Customer;

“Supervisory Authority” means the local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority. Board or other body responsible for administering Data Privacy Laws in the United Kingdom.

15.2 The parties agree that, in relation to the Customer and its Clients Data, the Customer shall be the Data Controller and Voca Solutions shall be the Data Processor.

15.3 Voca Solutions acknowledges that the Customer shall be solely responsible for the following:

15.3.1 Implementing appropriate and effective measures and be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures. Those measures should take into account the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons;

15.3.2 the purpose(s) for which and the manner in which the Customer and its Client Data will be Processed or used;

15.3.3 what Client Data to collect and the legal basis for doing so;

15.3.4 which items (or content) of Customer and Client Data to collect;

15.3.5 which individuals to collect Customer and Client Data about;

15.3.6 whether to disclose the Customer or Client Data, and if so, who to;

15.3.7 whether subject access and other individuals' rights apply including the application of any exemptions;

15.3.8 how long to retain the Customer and Client Data; and

15.3.9 whether to make non-routine amendments to the Customer or Client Data.

15.4 Voca Solutions shall comply with all Data Privacy Laws in connection with its role as a Processor of the Customer and its Clients Data, the services and the exercise performance of its respective rights and obligations under this Amendment Agreement.

15.5 Voca Solutions shall process the Customer and its Client data only in accordance with the Customers prior written instructions:

15.5.1 for such other purposes as may be instructed by or agreed with the Customer or as otherwise notified in writing from time to time; and

15.5.2 in accordance with the Data Privacy Laws;

15.5.3 for the purpose of performing its obligations under this Agreement.

15.6 Voca Solutions shall at its own cost and expense, implement appropriate technical, security and organisational measure to protect the Customer and its Client Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. In particular, such measure shall include, but not be limited to pseudonymisation and encrypting Customer and its Clients Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer and Its Clients Data can be restored in a timely manner after an incident or necessary to ensure the protection of Customer and its Clients Data.

15.7 Voca Solutions shall not otherwise modify, amend, remove or alter the contents of the Customer and its Clients Data or disclose or permit the disclosure of any of the Customer or its Clients Data to any third party without the prior written authorisation of the Customer.

15.8 Voca Solutions upon the termination of this Agreement, shall, unless otherwise required by Data Privacy Laws, return or delete, at the Customer's sole discretion, all Customer and its Clients Data and shall from the date of termination cease processing such Data.

15.9 Voca Solutions shall ensure that only those personnel who need to have access to the Customer and its Clients Data are

granted access to such Data (only for the purposes of the performance of the Agreement) and that all of the personnel required to access the Customer and its Clients Data:

15.9.1 are reliable and have been trained in how to handle and process Customer and its Clients Data; and

15.9.2 have been informed of the confidential nature of the Customer and its Clients Data and are subject to a duty of confidentiality.

15.10 Voca Solutions shall:

15.10.1 not appoint a sub-processor without the prior written consent of the Customer, and where the Customer grants its consent ensure an agreement is entered into with the relevant sub-processor which includes terms which are substantially the same as the terms set out in this Amendment. Voca Solutions shall remain responsible and liable for any act or omission or sub-processors. The Customer will not unreasonably withhold this consent and will provided valid legal reasons if consent is to be withheld;

15.10.2 not transfer Customer or its Clients Data to a country or territory outside the European Economic Area except with the prior written consent of the Customer;

15.10.3 assist the Customer by keeping records of all Data processing activities and implementing appropriate technical and organisational measures for the fulfilment of the Customers' obligations to respond to requests from Data Subject's to exercise Data Subject rights under the Data Privacy Laws including those laid down in Chapter III of the GDPR including Data Subject's rights to access, rectify, erase or object to the processing of Customer or its Clients Personal Data. Requests should be made by email to [support@myvoca.co.uk](mailto:support@myvoca.co.uk) or by raising a ticket directly by calling Voca Solutions 03300 882291;

15.10.4 notify the customer without undue delay to ensure any timescales prescribed by Data Privacy Laws can be achieved and

in any case within 24 hours if it becomes aware of a Data Breach affecting Customer or its Clients Data, providing the Customer with sufficient information to allow the Customer to meet any obligations to report or inform Data Subjects of the Data Breach under the Data Privacy Laws. Voca Solutions shall co-operate with the customer and take such reasonable commercial steps as are directed by the customer in relation to any such Data Breach;

15.10.5 notify the Customer in the event that it notifies either the Supervisory Authority or a Data Subject of a Data Breach;

15.10.6 provide reasonable assistance to the customer with any data protection impact assessments.

15.11 The Customer must inform Voca Solutions without undue delay if it suspects there has been a Data Breach affecting Customer Data by contacting Voca Solutions' Office by email to [support@myvoca.co.uk](mailto:support@myvoca.co.uk) or by phone to 03300 882291.

15.12 The Customer shall nominate and advise Voca Solutions of it nominated Data Protection Officer, if applicable.

15.13 In the event that Voca Solutions believes that the customer's Processing Instructions infringe Data Privacy Laws or in any other way are unlawful, Voca Solutions must immediately inform the customer.

15.14 Liability under Data Privacy Laws will be as follows:

15.14.1 Voca Solutions will be liable for the damage caused by processing only where it has not complied with obligations of this Clause 15 specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller;

15.14.2 Voca Solutions will be exempt from liability under Clause 15.4.1 if it proves that it is not in any way responsible for the event giving rise to the damage;

15.14.3 Where Voca Solutions (Processor) and the Customer (Controller), are involved in the same processing and where they are, under paragraph 15.4.1, responsible for any damage caused by processing, each party shall be held liable for the entire damage in order to ensure effective compensation of the data subject;

15.14.4 Where Voca Solutions has, in accordance with paragraph 15.4.3, paid full compensation for the damage suffered, Voca Solutions shall be entitled to claim back from the Customer and other controllers or processors involved in the same processing, that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 15.4.1.

## **16. Equipment Rental Terms**

16.1 Voca Solutions will at all times own all Rental Equipment supplied to Customer. Customer will not let, sell, charge, assign, sublicense or allow a third party to use the Rental Equipment nor remove any labels, and shall not prejudice Voca Solutions' rights in the Rental Equipment in any way. Voca Solutions may replace the Rental Equipment from time to time either with Customer's prior consent or provided that the replacement Rental Equipment is of a specification that is at least equal to the Rental Equipment originally supplied and such change does not materially disrupt the provision of the Services.

16.2 Subject to the other terms of this paragraph 16, Voca Solutions (or its authorised representative) shall, during its usual working hours:

16.2.1 where necessary install the Rental Equipment at Customer's Premises at a time and date agreed with Customer; and

16.2.2 use its reasonable endeavours to repair any faults to the Rental Equipment in accordance with its standard procedures (which are available on request).

16.3 It is Customer's responsibility to look after the Rental Equipment that is in its possession or custody and Customer agrees to pay for the Rental Equipment to be replaced or repaired if it is lost, stolen or damaged.

16.4 Customer will notify Voca Solutions promptly of any faults which occur, any repairs which become necessary, and of any loss, theft or damage to the Rental Equipment.

16.5 Customer agrees that it will only use the Rental Equipment in conjunction with the relevant Services and shall comply with Voca Solutions' reasonable instructions in relation to its use.

16.6 Customer shall be responsible for maintaining adequate cover in place to insure the Rental Equipment while it remains in its possession and custody. Customer will also be responsible for obtaining and, where appropriate, paying for all necessary licences, consents and approvals required for the installation and use of the Rental Equipment.

16.7 Customer will not (and will ensure that no-one else will) repair, alter, modify or maintain, or make any additions or attachments to, or otherwise alter, the Rental Equipment without Voca Solutions' prior written consent. Voca Solutions will not be liable for any costs or charges incurred, faults caused by, or repairs required as a result of, installation or programming of Rental Equipment that is carried out by any other person (other than Voca Solutions' employees or agents). Customer agrees to indemnify Voca Solutions for all losses, damages and expenses that are brought against or incurred by it, arising as a result of the same.

16.8 On expiry or termination of the Agreement or the relevant Service, all Rental Equipment must be returned to Voca Solutions in reasonable condition, subject to reasonable wear and tear. If Customer fails to return or make available for

collection the Rental Equipment in a reasonable condition or at all Voca Solutions may, at its option, invoice Customer for a sum equal to the original cost of the Rental Equipment less any depreciation together with any costs reasonably incurred by it.

16.9 In the event that Customer returns Rental Equipment to Voca Solutions and it is not received by Voca Solutions, in the absence of reasonable evidence that the Rental Equipment has been delivered to Voca Solutions Customer accepts that it shall remain liable for the Rental Equipment.

16.10 While the Rental Equipment may contain a default firewall it is Customer's obligation to install and maintain adequate protections to guard against security threats, including viruses and malware.

16.10 It is Customer's obligation to ensure that the Rental Equipment meets all applicable regulatory standards, e.g. The Payment Card Industry data security standard.