

Mobile Services Terms & Conditions

1. Agreement structure

1.1 Each Order Form between Customer and **Virtual Graffiti Ltd.** will incorporate these Terms and any applicable Service Specific terms (together, the 'Agreement'). Unless specifically stated otherwise in an Order Form, the Service Period shall be 24 months (the "Minimum Period") and the relevant term per connection for each connection shall be 24 months.

1.2 If there is any inconsistency between the various provisions of the Agreement, the following order of precedence will apply, where 1 has a higher precedence than 2 and so on: (1) Any agreed Amendment Notice (2) Order Form; (3) Service specific terms (4) General Terms.

2. Services and Coverage

2.1 **Virtual Graffiti Ltd.** shall use reasonable endeavours to provide Customer with the Services and to always ensure the security of Customer's communications. However, due to the nature of mobile technology, it is impossible to provide a fault-free service.

2.2 **Virtual Graffiti Ltd./Network Carrier** may suspend the Services: (i) to carry out maintenance or testing of the Network; (ii) during any technical failure of the Network, (iii) when it is necessary to safeguard the security and integrity of the Network or to reduce the incidence of fraud; (iv) where it identifies

Artificially Inflated Traffic; or (iv) due to Emergency Planning Measures. **Virtual Graffiti Ltd./Network Carrier** shall endeavour to keep all such suspensions to a minimum and shall give Customer notice of such suspension where reasonably practicable.

2.3 **Virtual Graffiti Ltd.** shall use reasonable endeavours to give Customer access to Overseas Networks; however, **Virtual Graffiti Ltd./Network Carrier** shall not be responsible for the performance of Overseas Networks, or any part of the Network not controlled by **Virtual Graffiti Ltd./Network Carrier**. Overseas Networks may be limited in quality and coverage and access and service availability depends on the arrangements between the Network and Overseas operators.

3. Customer's use of Equipment and Services

3.1 Customer may supply the Equipment and Services to End Users, but not to any other party. Customer is responsible for ensuring the compliance of End Users with the terms of this Agreement, all applicable laws, and Codes of Practice.

3.2 Customer shall only use Equipment authorised for use on the Network.

3.3 Customer shall not:

(a) use any Equipment or Services for any purpose that **Virtual Graffiti Ltd.** (acting reasonably) believes is abusive, a nuisance, illegal or fraudulent; or

(b) do anything that causes the Network to be impaired or damaged; or

(c) modify Equipment and/or Services (including any Software or integral safety features) that **Virtual Graffiti Ltd.** has supplied to Customer or End Users, except in accordance with the manufacturer's written specifications, as required by law or with our prior written permission.

3.4 Where a specific End User causes Customer to be in breach of its obligations of clause 3.3, Virtual Graffiti Ltd. shall be entitled to suspend such End User's use of the Services. Before exercising this right, Virtual Graffiti Ltd. shall notify Customer of its intention to do so where this is reasonably practicable, allowing an opportunity to remedy the alleged breach (where it is capable of remedy); otherwise, Virtual Graffiti Ltd. shall notify Customer as soon as reasonably practicable after the suspension. This right of suspension shall only apply during the period of breach, although reinstatement of the Service may be subject to the payment of a reconnection Charge by Customer.

3.5 During any period of suspension, Customer shall continue to pay all Charges due under this Agreement in respect of the suspended Services.

3.6 Customer may use the Equipment and/or Services to access the internet and services not provided under this Agreement. Virtual Graffiti Ltd. accepts no responsibility for these services, including where in accessing the service, Customer gives unauthorised parties access to its equipment.

4. GSM Gateways

Customer shall not connect or continue connection by or on behalf of itself or any End User of any GSM Gateway(s) to the Network without Virtual Graffiti Ltd.'s prior written consent, which may be withheld at Virtual Graffiti Ltd.'s absolute discretion. Customer shall cooperate with Virtual Graffiti Ltd. at all times to ensure that such GSM Gateways that are connected to the Network remain compliant with all applicable law. Customers should be aware that where a GSM Gateway is connected to a network in breach of this clause, Virtual Graffiti Ltd. has and will continue to disconnect SIM cards that it believes are being used illegally.

5. Charges and Payment

5.1 Virtual Graffiti Ltd. states all Charges exclusive of VAT, unless specified otherwise. All Charges not specified in an Order Form shall be at Standard List Price. Charges do not include the cost of delivery to the UK mainland of any Equipment we supply to you.

5.2 The Customer will pay and is responsible for the Charges, whether the Service is used by the Customer or a third party. This includes all Charges resulting from unauthorised or fraudulent use. The Customer will not be entitled to any reduction in Charges if it does not use all or any part of the Service.

5.3 Charges shall be charged in accordance with your price plan.

5.4 Access Fees shall be invoiced by Virtual Graffiti Ltd. monthly in advance and all other Charges shall be invoiced monthly in arrears. Invoices shall be paid by Customer in cleared funds no later than 14 calendar days from the date of the invoice ("Due Date"), by direct debit. If customer does not pay by direct debit, an administration charge may be charged. If Customer subsequently cancels its direct debit instruction without arranging an alternative direct debit mandate, Virtual Graffiti Ltd. shall be entitled to terminate this Agreement for material breach.

5.5 If Customer reasonably and in good faith disputes an invoice or part of it, Customer shall notify Virtual Graffiti Ltd. of such dispute within 14 days of receipt of the invoice, providing details of why the invoiced amount is incorrect and, if possible, how much Customer considers is due. All Charges not in dispute shall be paid by the Due Date.

5.6 Where Virtual Graffiti Ltd. has not received payment for undisputed Charges by the Due Date, Virtual Graffiti Ltd. shall: (i) contact Customer's Accounts Payable Department to request payment; (ii) be entitled

to charge interest on the overdue Charges at the bank of England standard base rate, permitted by applicable law; and (iii) be entitled to charge any administration fees or other similar charges levied by a bank in respect of any unpaid items returned by the bank. Where **Virtual Graffiti Ltd.** has not received payment within 16 calendar days of the Due Date, **Virtual Graffiti Ltd.** may take all or any of the following actions until such time as payment, including any interest due, has been received.

(a) withhold any sums owing to Customer by **Virtual Graffiti Ltd.** and offset it against any sums Customer owes to **Virtual Graffiti Ltd.** under this Agreement.

(b) suspend Customer's and/or End User's use of the Services in relation to which Charges are outstanding.

(c) withdraw any discount in relation to the relevant Equipment or Service and charge Customer the **Virtual Graffiti Ltd.**

Standard List Prices for that Equipment or Service; and

(d) subject to **Virtual Graffiti Ltd.** having first invoked at least one of the remedies as set out in Clauses [5.6 \(a\)](#) to [\(c\)](#), **Virtual Graffiti Ltd.** shall be entitled to terminate this Agreement in whole or in part in accordance with Clause [11.3](#).

5.7 Failure to make payment within the terms set may result in account suspension and., you will incur an administrative charge of £75.00.

5.8 Customer shall not be entitled to offset any sums owed to it by **Virtual Graffiti Ltd.** under any Agreement or dispute between the Parties against any sums that Customer owes to **Virtual Graffiti Ltd.** under this Agreement.

5.9 **Virtual Graffiti Ltd.** may credit assess Customer from time to time as reasonably required to assess **Virtual Graffiti Ltd.'s** risk. Each credit assessment shall entitle Customer to have a credit limit on Customer's **Virtual Graffiti Ltd.** account (details of which are

available on request).

5.10 If **Virtual Graffiti Ltd.** is not satisfied as to the creditworthiness of the Customer, it may:

5.10.1 notify the Customer that no further credit will be allowed.

5.10.2 require all Charges owing by the Customer to **Virtual Graffiti Ltd.** to be paid immediately in cash.

5.10.3 require the Customer to pay Charges in advance.

5.10.4 require the Customer to provide a guarantee as security for payment of future invoices; and/or

5.10.5 require the Customer to pay a deposit.

5.11 Customer is not entitled to change its tariff to another tariff with a lower monthly fixed charge during the Minimum Period.

5.12 If Customer does upgrade or change its tariff before the end of the initial Minimum Period (the "Initial Period"), Customer acknowledges and agrees that it must extend the Agreement by a further Minimum Period (the "Extension Period"). If the Initial Period has not expired at the date of upgrade or tariff change, the relevant Extension Period to the Initial Period shall be extended by the number of months by which the Initial Period had not been achieved. For example, if at month 21 of a 24-month Initial Period, Customer wishes to extend by a further 12-month period, the Extension Period will be increased by 3 months to 15 months.

5.13 Where the Customer does not pay by direct debit, unless **Virtual Graffiti Ltd.** agrees otherwise, **Virtual Graffiti Ltd.** will:

5.13.1 charge a payment processing fee of £4.50 and;

5.13.2 deduct the payment processing fee from any money received before any payment is

allocated against the Charges for the Service.

6. SIM Cards and Numbers

6.1 SIM Cards shall always remain the property of **Virtual Graffiti Ltd.** and Customer shall be entitled to use the SIM Cards (including any Software they contain) provided for use with the Services only.

6.2 Customer shall use all reasonable endeavours to ensure that SIM Cards are only used with Customer's authorisation and shall inform **Virtual Graffiti Ltd.** as soon as is reasonably practicable after Customer becomes aware that a SIM Card is lost, stolen or damaged. Subject to Clause 9.1 Customer shall be liable for any loss or damage suffered by Customer or its End Users because of unauthorised use of SIM Cards (including due to loss or theft), up to the time that Customer has notified **Virtual Graffiti Ltd.** that such SIM Card is being used without Customer's authorisation.

6.3 **Virtual Graffiti Ltd.** shall allocate telephone numbers to Customer which the Customer shall only use to access the Services. **Virtual Graffiti Ltd.** may reallocate or change such telephone numbers because of changes in applicable law or instructions from the Regulatory Authorities but will exercise all reasonable endeavours to minimise any disruption to Customer or End User. **Virtual Graffiti Ltd.** may withdraw telephone numbers that have been allocated to Customer because of Customer's failure to comply with this Agreement.

6.4 If Customer decides to Port a mobile telephone number allocated to Customer by **Virtual Graffiti Ltd.**, **Virtual Graffiti Ltd.** shall transfer Customer's mobile telephone numbers to Customer's nominated mobile network operator for Customer's use in accordance with OFCOM regulations.

7. Software License

7.1 Equipment and Services provided

under this Agreement may contain or use Software. This Software is generally not owned by **Virtual Graffiti Ltd.** Any Software that is used by Equipment or Services shall be governed by the terms of the relevant Software license set out in such Services Schedule or any shrink wrap or click through Software license provided with the relevant Equipment or Service. In all other cases, where Software is provided **Virtual Graffiti Ltd.** grants the Customer and/or its End Users, as applicable, a non-exclusive, royalty free license to use any such Software for the Term of this Agreement.

7.2 Customer or End User's license shall be a single user license. Customer may make one copy of the Software for back up purposes. If Customer does not accept the terms of the relevant click through or shrink wrap Software license, Customer shall be prohibited from using the relevant feature of the Service to which the Software relates, and **Virtual Graffiti Ltd.** shall not be bound to deliver the relevant Service. Customer shall be responsible for any Software upgrades (including charges) specified by the licensor or **Virtual Graffiti Ltd.**

8. Orders and Equipment

8.1 Customer shall order Services and Equipment by submitting an order form through **Virtual Graffiti Ltd.'s** online ordering system or by email or as notified to Customer by **Virtual Graffiti Ltd.** from time to time. Customer shall accurately complete all fields set out in the order form.

8.2 Orders are binding on both Parties from the date of acceptance by **Virtual Graffiti Ltd.** If acceptance is not express, it shall be deemed to have occurred on dispatch of Equipment or activation of Service, by **Virtual Graffiti Ltd.**

9. Equipment

9.1 If Customer orders Equipment directly from **Virtual Graffiti Ltd.**, which **Virtual Graffiti Ltd.** supplies directly to Customer the provisions

of this clause shall apply in relation to that Equipment. **Virtual Graffiti Ltd.** shall bear the risk of loss or damage to Equipment and SIM Cards until the point of delivery to Customer. Subject to clause 9.2, Customer shall bear the risk of loss or damage to Equipment and SIM Cards from the time of delivery to Customer.

9.2 Customer shall notify **Virtual Graffiti Ltd.** in writing within 5 Business Days of receipt if Equipment or SIM Cards arrive having been damaged, or if the order has been incorrectly fulfilled. Customer shall notify **Virtual Graffiti Ltd.** in writing

within 10 Business Days of confirmation of **Virtual Graffiti Ltd.'s** order acceptance if Customer does not receive the Equipment or SIM Card. Following such notification by Customer, **Virtual Graffiti Ltd.** shall replace damaged new Equipment or SIM Cards, Equipment lost or stolen in transit, and any incorrect Equipment or SIM Card, free of charge. In the case of damaged used Equipment **Virtual Graffiti Ltd.** shall (at its option) replace or repair the Equipment.

9.3 Subject to clause 6.1, title to Equipment shall pass to Customer as soon as **Virtual Graffiti Ltd.** has received payment for it in full. Where Equipment is provided free of charge and is paid for over the duration of the Initial Period, title shall pass at the end of the Initial Period which will be subject to an administration fee.

9.4 Where Equipment supplied to Customer by **Virtual Graffiti Ltd.** becomes faulty for reasons other than through Customer's acts, omissions or misuse within the manufacturer's warranty period, Customer shall return such Equipment to **Virtual Graffiti Ltd.** at **Virtual Graffiti Ltd.'s** cost and **Virtual Graffiti Ltd.** shall repair or replace the Equipment in accordance with **Virtual Graffiti Ltd.'s** Recovery Policy, or where mandated by the manufacturer of the device, in accordance with the relevant manufacturer's repair, replacement or recovery

policy. Any out of warranty repairs shall be at **Virtual Graffiti Ltd.'s** Standard List Price.

9.5 **Virtual Graffiti Ltd.** does not manufacture Equipment and save for Clause 9.4 above excludes, to the fullest extent permissible at law, all warranties, terms, or conditions in relation to Equipment, whether implied by law or otherwise. **Virtual Graffiti Ltd.** shall pass on the benefit of any warranties that **Virtual Graffiti Ltd.** obtains from the manufacturer of any Equipment supplied to Customer by **Virtual Graffiti Ltd.** However, on expiry of this Agreement, any commitment **Virtual Graffiti Ltd.** must liaise with the manufacturer in respect of any warranty shall cease.

9.6 Customer shall not remove or obscure any logo or writing on Equipment that **Virtual Graffiti Ltd.** has supplied to Customer and which Customer does not own. Customer shall replace all batteries and other consumable parts of the Equipment.

9.7 Customer shall not and shall ensure that End Users do not tamper with or attempt to repair or service the Equipment or allow any party other than **Virtual Graffiti Ltd.** to do so. Any attempt to do this may invalidate the manufacturer's warranty

9.8 Customer shall keep all Equipment that **Virtual Graffiti Ltd.** has supplied to Customer and which Customer does not own, in Customer's possession (which shall be deemed to include the possession of Customer's End Users), and shall not sell it, place a charge on it or otherwise dispose of it.

9.9 **Virtual Graffiti Ltd.'s** supply of Equipment and accessories shall be subject to availability.

9.10 If **Virtual Graffiti Ltd.** provides Customer or an End User with security codes as part of the Services, Customer agrees, and agrees to ensure, that its End Users shall keep

the security codes confidential. Customer must inform Virtual Graffiti Ltd. immediately if it suspects that security codes have been disclosed to a third party so we can issue new security codes.

9.11 Virtual Graffiti Ltd. is not obliged to agree to any upgrades to the Equipment it supplies to the Customer (either directly or via a Partner) during or after the Minimum Period but if it does, Virtual Graffiti Ltd. shall be entitled to extend the Minimum Period.

10. Call Limit, Deposit, and part payment

10.1 Virtual Graffiti Ltd. may set a limit on the amount of Charges Customer may incur during each calendar month and/or a maximum number of active Connections and/or a bar on SIM Card(s) being used on overseas networks or for making international calls or premium rate calls, which we refer to as a call limit. Virtual Graffiti Ltd. may agree to increase or remove the call limit, after making credit checks. Customer may be able to go over your call limit, but if this happens you shall be required to pay all Charges immediately. Virtual Graffiti Ltd. reserves the right to refuse to provide Equipment and/or Services to you if in Virtual Graffiti Ltd.'s opinion it may cause you to exceed your call limit or if the call limit is already exceeded.

10.2 Virtual Graffiti Ltd. may ask you for a deposit:

10.2.1 When we connect your SIM card.

10.2.2 If you wish to increase or remove your call limit.

10.2.3 if you increase how much you use the Services; or

10.2.4 to unblock your SIM card from contacting international numbers, using overseas networks, or making premium rate calls.

10.3 When this Agreement expires or is terminated for whatever reason, Virtual Graffiti Ltd. will repay any deposit that you have provided to us, less any money you owe us. Virtual Graffiti Ltd. will not pay any interest on any deposit we receive from you.

10.4 If there is a significant increase in your usage between bills, we may contact you and require you to pay all or part of your outstanding usage Charges to continue to use the Services.

10.5 Virtual Graffiti Ltd. may automatically add a spend cap (of up to £1,000) to account, were a Spend Cap has not been opted in by the customer. This limit will last until either you increase your spending cap, or until your airtime allowances refresh the next month.

11. Termination

11.1 The Customer may cancel this Contract at any time after the Connection Date, subject to the payment of any early termination charges as set out in Clause 12.7. Cancellation of this Contract does not automatically cancel any other contracts unless specifically referenced.

11.2 This Contract may be ended by either party on 30 days' written notice by either party giving notice in writing.

11.3 Written signed notice must be sent on Customer headed paper via email to uc@virtualgraffiti.co.uk

11.2 The Parties shall each have the right to terminate this Agreement with immediate effect (by serving written notice of termination to the other Party):

11.2.1 if the other Party becomes subject to an Insolvency Event; or

11.2.2 if the other Party is in material breach of any of its obligations under this Agreement

(provided that where such breach is capable of remedy, the breaching Party is given 30 days to rectify such breach from the date that notice of any breach is received from the non-infringing Party).

11.3 Subject to Clause [5.5\(d\)](#), **Virtual Graffiti Ltd.** may terminate this Agreement in whole or in part with immediate effect, by giving notice in writing:

11.3.1 where Customer has failed to pay any Charges due within 14 calendar days of the Due Date and has gone through the **Virtual Graffiti Ltd.** collection cycle: or

11.3.2 where **Virtual Graffiti Ltd.** has repeatedly invoked its rights of suspension pursuant to Clause [3.3](#) or Clause [5.6\(b\)](#) or has invoked its right of suspension under clause [2.2 \(iv\)](#) for a period of not less than 14 days.

11.4 The Parties shall acknowledge, as soon as reasonably possible, the receipt of any notice of termination of this Agreement (in whole or in part) received in writing from the other Party.

12. Consequences of termination

12.1 On termination of this Agreement as a whole, or partial termination (for example of a specific Order), Customer shall immediately cease use of the Software (except Software which is embedded in Equipment to which Customer has title).

12.2 Customer shall (if requested by **Virtual Graffiti Ltd.**), delete or destroy all copies of the user documentation which VIRTUAL GRAFFITI LTD. has supplied or which Customer has copied, in whatever form and return, delete or destroy all copies of the Software (except Software which is embedded in Equipment to which Customer has title) within 7 calendar days of termination of this Agreement or of termination of the relevant Service, and provide **Virtual Graffiti Ltd.** with written confirmation

that all such copies have been returned, deleted or destroyed.

12.3 Where this Agreement is terminated as a whole, **Virtual Graffiti Ltd.'s** entire relationship with Customer shall terminate and **Virtual Graffiti Ltd.** shall no longer supply, and Customer shall immediately cease to use any Services that were supplied pursuant to this Agreement.

12.4 On expiry of the Minimum Term, the Agreement will continue for further periods each equivalent to the Minimum Term until terminated by either party giving to the other not less than 30 days prior written notice but not greater than 60 days prior written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate.

12.5 On termination of the Order Form, the Customer's Services supplied pursuant to the relevant Order Form shall cease immediately and the Customer will immediately pay to **Virtual Graffiti Ltd.** all sums due or payable under the relevant Order Form in relation to the terminated or expired Services, including any early termination payment calculated in accordance with clause [12.7](#) below.

12.6 Where this Agreement or any Service has been terminated in accordance with Clause [10](#) or as otherwise permitted in this Agreement prior to expiry of a Service Period, Customer shall pay to **Virtual Graffiti Ltd.** a lump sum termination payment calculated in accordance with the provisions of [12.7](#). For the avoidance of doubt, where this Agreement is terminated as a whole, each Connection placed under this Agreement shall also terminate.

12.7 Where Customer terminates any Connection prior to the expiry of that Connection's term per connection (whether on termination of the Services as a whole, or otherwise, Customer shall pay to **Virtual Graffiti**

Ltd. a lump sum termination charge calculated as:

(a) **Virtual Graffiti Ltd.** Early Termination Charges will be calculated by calculating the Call and Service Rental charges that the Customer would have paid for, had they not terminated the agreement early, based on the average charges over the previous six months' invoices prior to the date of termination. e.g., a Customer averaging £100 ex vat per month, terminating a Contract six months early would result in an Early Termination Charge of £600 ex vat per month.

12.8 The Customer acknowledges that the Early Termination Charge calculation detailed in 12.7 is a fair and reasonable estimate of the loss incurred by **Virtual Graffiti Ltd.** because of the early termination of the agreement.

12.9 If Customer disconnects a material part of its Connections, or systematically disconnects Connections on a recurring basis during the term of this Agreement, **Virtual Graffiti Ltd.** shall have the right to terminate the relevant Service and charge Customer a termination payment calculated in accordance with the formula set out in clause 12.7.

13. Intellectual Property

13.1 The Intellectual Property Rights that exist in Services, Software and Equipment are owned by **Virtual Graffiti Ltd.** and **Virtual Graffiti Ltd.'s** licensors. By supplying Customer with Services, Software and Equipment, **Virtual Graffiti Ltd.** is not transferring or assigning ownership of any Intellectual Property Rights in or relating to them to Customer.

13.2 Where **Virtual Graffiti Ltd.** creates Intellectual Property Rights during or because of the supply by **Virtual Graffiti Ltd.** of Services, Software and Equipment to Customer, **Virtual Graffiti Ltd.** shall own all such Intellectual Property Rights.

13.3 Customer must not do anything to jeopardise Virtual Graffiti Ltd.'s or its licensor's Intellectual Property Rights.

14. Changing the terms of this Agreement

14.1 The provisions in this clause 14 are without prejudice to the respective rights of the parties as set out elsewhere in the Contract.

14.2 **Virtual Graffiti Ltd.** may amend the Contract (including the Charges) at any time by either:

14.2.1 publishing the amendment online at <https://www.INSERTWEBADDRESS> (or any other online address that Virtual Graffiti Ltd. advises the Customer of); and/or

14.2.2 by giving Notice to the Customer, for amendments that cause the Customer material detriment, at least 30 days before the change is to take effect and, in the case of any other amendments, at least one day before the change is to take effect.

14.3 Where practicable, **Virtual Graffiti Ltd.** shall provide Customer with advance notice of such changes. If advance notice cannot be provided, **Virtual Graffiti Ltd.** shall advise Customer of the change as soon as practicable after it has been made. **Virtual Graffiti Ltd.** shall not be liable to Customer for any claims by Customer because of such changes.

14.4 **Virtual Graffiti Ltd.** may change the terms of this Agreement without Customer's consent where to the extent that such changes are required due to alterations to the Network; the way **Virtual Graffiti Ltd.** operates; the way in which **Virtual Graffiti Ltd.** provides Services (including where, in **Virtual Graffiti Ltd.'s** reasonable opinion, it is no longer commercially viable to provide a particular Service), provided that such changes affect at least 90% of **Virtual Graffiti Ltd.'s** relevant customer base. In these circumstances, **Virtual Graffiti Ltd.** shall advise

Customer of the change via an Amendment Notice, at least 30 days in advance of the change taking effect. If Customer is materially disadvantaged and objects to such change, **Virtual Graffiti Ltd.** shall not be liable to Customer for any claims by Customer because of such changes.

14.5 **Virtual Graffiti Ltd.** or the Network Supplier may amend the charges in April of each year, by introducing an increase to all or any Charges by a percentage up to or equal to the UK Consumer Prices Index (CPI) rate published by the Office for National Statistics (or by any other body to which the functions of that office may be transferred) in January of that year plus 3.9%. If the CPI rate is a negative, Charges will be increased no more than 3.9%. If the CPI is not published for the given month, **Virtual Graffiti Ltd.** may use a substituted index or index figures published by that office for that month. For the avoidance of doubt, an increase to the Charges under this clause [14.5](#) shall not be an amendment to the Contract that causes the Customer material detriment.

14.5 Save as set out in Clauses [14.2](#), [14.4](#) and [14.5](#) changes to this Agreement must be made by written agreement of the Parties.

15. Confidentiality

15.1 This Agreement and any information about Services that is not publicly available, is confidential, and may be disclosed by Customer to Customer's employees only, strictly on a need-to-know basis, unless otherwise agreed in writing with **Virtual Graffiti Ltd.**

15.2 **Virtual Graffiti Ltd.** shall be entitled to keep records of Customer information, which **Virtual Graffiti Ltd.** shall use to perform **Virtual Graffiti Ltd.'s** obligations under this Agreement, and for related purposes.

15.3 **Virtual Graffiti Ltd.** shall be entitled to disclose Customer information as required by any legal, regulatory, or financial agency or by

court order, any **Virtual Graffiti Ltd.** group company or any third party (some of whom may be outside of the European Union) for the purposes of providing the Service.

16. Liability

16.1 Nothing in this Agreement shall operate to restrict either Party's liability to the other from: death or personal injury resulting from negligent acts or omissions; claims for non-payment; the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); breaches of any Software license; breach of any obligation of confidence; and any infringement of **Virtual Graffiti Ltd.'s** Intellectual Property Rights.

16.2 Except for Clause [16.1](#) above and to the extent not prohibited by law:

16.2.1 each Party's maximum aggregate liability for all claims relating to Equipment or a Service provided pursuant to this Agreement, whether for breach of contract (including repudiatory breach), breach of warranty or in tort, including negligence, will be limited to 100% of the value of the Charges paid or payable under the relevant Order Form during the previous 12-month period under which the Equipment or Service that is the subject matter of the claim is supplied; and

16.2.2 neither Party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the terms of this Agreement; nor any direct or indirect loss of business, revenue, profits, goodwill, use, data, compensation, ex gratia payment or other economic advantage, however they arise, whether in breach of contract (including repudiatory breach), breach of warranty or in tort, including negligence, and even if that Party has previously been advised of the possibility of such damages or whether such liability could be assumed to be the responsibility of **Virtual Graffiti Ltd.**, **Virtual**

Virtual Graffiti Ltd. shall not be liable to Customer if it is unable to provide any of the Services contemplated by this Agreement due to circumstance outside its reasonable control.

16.3 Except for the payment obligations of the Customer, neither Party will be responsible or liable in any way for the failure or delay in the performance of its obligations due to Force Majeure. If a cause relied on by a Party hereunder ceases to exist, the Party will perform or resume performance of its obligations and the time for performance will be extended by a period equal to the duration of the Force Majeure. If Force Majeure persists for a period of more than 60 days, the other Party will be entitled to terminate this Agreement on written notice.

16.4 The warranties specified in this Agreement and/or any Service Specific Terms are the only warranties provided with respect to Services provided to Customer by **Virtual Graffiti Ltd.** To the extent permissible at law, all other warranties (whether express or implied and including any implied warranties of fitness for a particular purpose or merchantability) are excluded provided that where legislation implies warranties or conditions or imposes obligations (statutory provisions) which cannot be excluded, restricted, or modified except to a limited extent, this Agreement must be read subject to those implied statutory provisions.

17. Transferring this Agreement to others

17.1 **Virtual Graffiti Ltd.** shall be entitled to transfer in whole or in part any of its rights and obligations to any company within **Virtual Graffiti Ltd.'s** Group at any time. **Virtual Graffiti Ltd.** may use subcontractors to perform any of its obligations under this Agreement but remains responsible for their performance. **Virtual Graffiti Ltd.** may transfer in whole or in part any of its rights and obligations under this Agreement to any other third party if it has obtained the prior written consent of the

Customer which shall not be unreasonably withheld or delayed.

17.2 Customer may transfer in whole or in part any of its rights and obligations under this Agreement to any other person or company, if it has obtained **Virtual Graffiti Ltd.'s** prior written consent to such transfer and has satisfied any reasonable conditions imposed by **Virtual Graffiti Ltd.** (including credit vetting of the entity to whom customer intends to transfer its rights and obligations under this agreement).

17.3 Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

18. General Provisions

18.1 If Customer supplies **Virtual Graffiti Ltd.** with personal data (for example relating to End Users) Customer shall ensure that it is accurate and up to date when disclosed. Customer shall also ensure that they have obtained from the individuals concerned all necessary consents under the Data Protection Legislation to both the supply of the data to **Virtual Graffiti Ltd.**, and the processing of it by **Virtual Graffiti Ltd.**, for the purposes of performance of this Agreement, supply of the Equipment and Services and for direct marketing about **Virtual Graffiti Ltd.'s** similar products and services. Customer shall also ensure that any individual to whom personal data relates has given consent for **Virtual Graffiti Ltd.** to pass such data back to Customer. Customer agrees that where it is reasonably requested by a Partner, **Virtual Graffiti Ltd.**

may provide Customer's billing and contract information to the relevant Partner for the purposes of calculating commissions and administration of the account.

18.2 Each Party shall comply with its obligations under the UK GDPR. Customer

acknowledges that **Virtual Graffiti Ltd.** retains the role of Data Controller as defined in the UK GDPR except in the limited circumstances where **Virtual Graffiti Ltd.** processes any personal data for and on behalf of Customer.

18.3 All notices served by Customer under this Agreement shall be in writing and sent to the **INSERT JOB TITLE** at **Virtual Graffiti Ltd., Virtual Graffiti Ltd. Address Company Registration No: INSERT,** or any other address **Virtual Graffiti Ltd.** directs Customer to use from time to time. **Virtual Graffiti Ltd.** shall send all notices to Customer at Customer's registered office. Notices will be deemed given where they are hand delivered, when a duly authorised employee or representative of the recipient gives written acknowledgement of receipt; for e-mail communication, at the time the communication enters the information system of the recipient; for posting, three days after dispatch; and for fax on receipted transmission of the fax.

18.4 Neither Party shall lose any right under this Agreement if it fails to use that right, or delays in using it. For a waiver of a right to be valid, it must be written and will not give rise to an ongoing waiver of that right unless it is expressly stated to do.

18.5 Termination of this Agreement or any part thereof, shall be without prejudice to any other rights or remedies a Party may be entitled to at law or under the Agreement and shall not affect any accrued rights or liabilities of either Party nor the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

18.6 This Agreement is governed by English Law and is subject to the non-exclusive jurisdiction of the English Courts.

18.7 Only provisions set out in this

Agreement shall apply to **Virtual Graffiti Ltd.'s** supply of Services to Customer. All other provisions are expressly excluded to the maximum extent permitted by law. The Parties acknowledge that, in entering into this Agreement, neither Party has relied upon any statement or warranty made, or agreed to, by any person, except those expressly set out within this Agreement. However, this shall not be taken to exclude either Party's liability for fraud.

18.8 If a misrepresentation or untrue statement has been made, the only remedy available to the Parties shall be a claim for damages for breach of this Agreement, unless such misrepresentation or untrue statement was made fraudulently, or a provision of the Agreement was induced by fraud, in which case all remedies under English Law shall be available.

18.9 All headings in this Agreement are there for convenience, and do not have any legal effect. Use of the singular includes the plural and vice versa.

18.10 Any changes made to Customer's systems or processes that may affect the Services (including any change to computer server software) are at Customer's sole risk. **Virtual Graffiti Ltd.** shall not be liable to continue to support the Services to the extent that they are affected by such change.

18.11 Every provision in this Agreement is independent from the others to the extent that, if a provision, or any part of it, is ruled to be illegal or unenforceable by the English Courts, that provision or the relevant part of it shall be treated as having been deleted from this Agreement, without affecting the remainder of that provision or the other provisions of this Agreement, which shall still have full effect.

18.12 Where **Virtual Graffiti Ltd.** supplies Equipment and Services to Customer that is not

expressly covered by the Order Form, such supply shall be deemed to be governed by the terms and conditions of this Agreement.

18.13 If there is a dispute under this Agreement, and Virtual Graffiti Ltd. has been unable to resolve the issue to Customer's satisfaction, Customer may escalate the issue to Virtual Graffiti Ltd. customer services. If Virtual Graffiti Ltd. customer services are unable to resolve the issue, this issue will be escalated through Virtual Graffiti Ltd.'s customer complaints procedure. If you are a Customer who employs fewer than 10 employees and our customer services team is unable to resolve your complaint, you may ask that the matter be referred to an independent ombudsman in accordance with our customer complaints code of practice which is available by contacting Virtual Graffiti Ltd.. The Parties shall use the escalation process to its full before taking legal action against the other Party.

18.14 All information that the Parties provide to each other in relation to this Agreement must be accurate and complete and Customer shall promptly inform Virtual Graffiti Ltd. in writing of all changes to information Customer has provided to Virtual Graffiti Ltd. if Customer intends to stop, stops, or has stopped trading, if Customer intends to sell its business, if Customer changes name or if the legal status of Customer's business changes.

19. Compliance with Ofcom General Conditions of Entitlement

19.1 Where the relevant Service is an Electronic Communications Service pursuant to the Applicable Law including the Ofcom General Conditions of Entitlement ('General Conditions'), this clause will apply. Where the relevant Electronic Communications Service is part of a Bundle, this clause will extend to the whole Bundle including, where applicable, any element of the Bundle that is not an Electronic Communications Service.

19.2 To comply with requirements set out in the General Conditions, Virtual Graffiti Ltd. may provide Customer with certain information, where applicable.

19.3 Customer may waive their right to certain protections under the General Conditions. If applicable, Waivers will be set out in the Commercial Terms and/or Order Form.

19.4 Customer can verify if the Service is an Electronic Communications Service and find out more information on Waivers at <https://www.insertwebsite>

Definitions

Access Fee - The monthly or other periodic fee payable by Customer for use of the Services.

Amendment Notice - A document setting out a change to this Agreement that is issued to Customer by Virtual Graffiti Ltd. that does not require the signature of either Party.

Artificially Inflated Traffic - A flow or volume of traffic via any Service, which Virtual Graffiti Ltd. believes is: (i) disproportionate to the flow or volume of traffic which Virtual Graffiti Ltd. expects from good faith commercial practice and usage of the Service;

(ii) disproportionate to Customer's previous traffic profiles (in any given month) with Virtual Graffiti Ltd.; (iii) uses automated means to make calls (save where this is expressly approved by Virtual Graffiti Ltd. in writing); or (iv) may result in Customer exceeding the credit limit which Virtual Graffiti Ltd. places on Customer's Virtual Graffiti Ltd. account from time to time.

Billing Manual - Virtual Graffiti Ltd.'s call- and billing rounding measures from time to time, which shall be available to Customer on request.

Business Day - A day (other than a Saturday or a Sunday) on which clearing banks are open for business in the city of London (other than solely

for trading or settlement in Euro).

Charge - Access Fees, Connection Fees, fees for Equipment, Software License fees, call fees, airtime fees and all other fees payable by Customer for use of the Services.

Codes of Practice - All guidelines governing use or provision of mobile telecommunications and data services, issued by any generally recognised bodies (such as PhonepayPlus) or that are adopted by Virtual Graffiti Ltd. from time to time, and all instructions, regulations or guidance issued by the Regulatory Authorities, whether mandatory.

Connection - A Virtual Graffiti Ltd. SIM Card that has been configured to attach to the Network, with a price plan or SOC associated with it so that End Users can use and be charged for Services supplied under an Order Form.

Customer Information - Information that (a) Customer provides to Virtual Graffiti Ltd.; (b) details of how Customer uses Services, including information relating to the volume and types of calls made, details of charges paid & other financial information; or (c) details of how Customer has performed in meeting its obligations under this Agreement.

Emergency Planning Measures - The measures that may be taken as a result of Virtual Graffiti Ltd.'s obligations under (i) the General Conditions under section 45 of the Communications Act 2003 and (ii) the Civil Contingencies Act 2004, or any similar law.

End User - A person using Equipment or a Service, who is an employee or contractor of Customer.

Equipment - Any tangible material, but not a SIM Card, supplied by Virtual Graffiti Ltd. to Customer, or connected to the Network on Customer's behalf, such as a mobile phone, a connecting cable, a power supply, or a PC data

card.

Force Majeure - Any cause beyond a party's reasonable control including without limitation, acts of God, war, fire, flood or other accident, strike, lockouts, delays in transport, material shortages, failures or fluctuations in electric power or telecommunications services or equipment, restrictions or prohibitions of any government or semi- government authority.

UK GDPR- is the UK General Data Protection Regulations and the UK's Implementation of the General Data Protection Regulation on the protection of natural persons regarding the processing of personal data and on the free movement of such data.

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

Insolvency Event - An event where a Party either ceases or threatens to cease conducting its business in the normal manner; or is treated as being insolvent, or threatens or is in jeopardy of becoming insolvent because it: (a) is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986); or (b) makes or offers to make any arrangement or composition with any one or more of its creditors; or (c) commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against it; or (d) any resolution to wind up it up (being a limited company) is issued or passed or presented otherwise than for reconstruction or amalgamation; or (e) has had a receiver, administrator or liquidator appointed to it.

Intellectual Property Rights - Patents, design rights, trademarks, copyrights (including any such rights in typographical arrangements, websites or software), rights subsisting in trading, business or domain names and e- mail addresses, rights in inventions, rights in

databases and all other intellectual property rights of a similar or corresponding character which subsist now or in the future in any part of the world whether registered or not and whether or not capable of registration, and any applications to register or rights to apply for registration of any of the foregoing in all parts of the world.

Network - The telecommunication systems **Virtual Graffiti Ltd.** uses to provide the Services.

OFCOM - The UK communications industry regulator appointed and empowered under the provisions of the Communications Act 2003, or any appointment that replaces it

Order Form - The document setting out the agreed commercial terms relating to **Virtual Graffiti Ltd.'s** provision of Equipment and/or Services which includes **Virtual Graffiti Ltd.'s** charges and any specific commercial terms, and which incorporates any relevant Service terms and conditions and these General Terms

Overseas Networks - Telecommunication systems outside of the UK Mainland used (but not controlled) by **Virtual Graffiti Ltd.** in providing the Services.

Partner a person authorised by **Virtual Graffiti Ltd.** who may have sold Equipment or Services to the Customer.

Port - The transfer of a mobile number that is connected to the **Virtual Graffiti Ltd.** Network under this Agreement to a different network provided by another supplier.

Price plan charges guide – the terms and “out of price plan bundle” charges for your price plan which is available from **Virtual Graffiti Ltd.**

Regulatory Authorities - OFCOM, the Office of Fair Trading, the Competition Commission, the Information Commissioner, the Advertising Standards Authority, or any similar authority established from time to time.

Recovery Policy – **Virtual Graffiti Ltd.'s** policy regarding the replacement or repair of faulty equipment, as amended from time to time.

Service - A service provided by **Virtual Graffiti Ltd.** pursuant to this Agreement as described in the relevant Service Specific Terms.

Service Period - The minimum term for which Customer commits to receive a Service, as specified in the relevant part of the Order Form.

Service Specific Terms - A Schedule that sets out service specific information such as terms and conditions, specifications, and other technical information.

SIM Card - A subscriber identity module card, which is an electronic memory device for storing user specific data to allow controlled and secure use of Equipment on the Network.

Software - A machine executable computer program, software module or software package or any part thereof (in object code only), supplied by **Virtual Graffiti Ltd.** or its licensors to Customer irrespective of how it is stored or executed.

Software License - The terms and conditions that prescribe how Customer shall use Software and set out the rights of the Software owner/licensor and the Software user in relation to such Software.

Standard List Price(s) – **Virtual Graffiti Ltd.'s** standard unsubsidised Charges for business Services and Equipment as advised to Customer by **Virtual Graffiti Ltd.** and/or as made available on request by **Virtual Graffiti Ltd.** (as amended by **Virtual Graffiti Ltd.** from time to time).

Subsidy – Any fund which may be used by the Customer for further equipment or services and/or any other sum or investment paid or made available to the Customer by **Virtual**

Graffiti Ltd. under the Contract, all of which are, for the avoidance of doubt, made at the sole discretion of the Supplier. This includes Cashback, Hardware Fund, Hardware Allowance, Termination Fees, and discounts.