

WHOLESALE AGREEMENT

Voiceworks UK Ltd

(we, us, our)

Enconvo UK Ltd trading as Voiceworks UK a company registered in England (number 04021816) whose principal place of business is: Communications House, Hadley Park, Hadley, Telford TF1 6QJ

Vat Number 108267616

Contact email address: sales.support@voiceworks.co.uk

Registered Office is Communications House, Hadley Park, Hadley, Telford TF1 6QJ.

Wholesaler

(you, your)

A company registered in England (Insert number) whose principal place of business is: [insert address]

Vat Number [insert VAT number]

Contact email address: [insert email address]

Registered Office is [insert registered office address].

WHOLESALE AGREEMENT

We have prepared this agreement to explain the terms on which you may participate in our Wholesaler network and access and use the Voiceworks UK Ltd Operator Portal.

As we offer a range of different Services, we have only included the key terms here that apply to all of the Services. Once you log in to the Voiceworks UK Ltd Cloud Market Operator platform ("**Operator Portal**") and select the Services you wish to make available to your Customers, the corresponding Service Specific Terms (including any applicable Service Level Agreements) will be presented for your review. You will be required to review and formally accept these terms before we proceed with activating the selected Services on your behalf.

Please read these terms carefully and, if you agree to participate in our Wholesaler network on this basis, electronically sign the signature page at the end of this document. Once you have signed this document, it will form a legally binding agreement which will remain in effect until terminated as described below.

WHOLESALE TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, we use various words and phrases that have specific meanings. Unless the context requires otherwise, the following definitions shall apply:

Customer

a customer or potential customer of yours to whom you resell a Service in accordance with the terms of this agreement.

Fees

the fees for the Services as set out within the Operator Portal and as payable in accordance with clause 8;

Voiceworks UK Ltd Branding

the Voiceworks UK Ltd and Message Stream name and logo and any other names, logos or identifiers as are used from time to time to identify us and our Services;

Operator Portal

the Operator interface which we make available to you to enable you to manage your account and configure Services;

Prohibited Territory

a country or territory that is on a prohibited or embargoed countries list issued by a relevant government authority in the UK or the USA (or by the EU so far as such list applies to the UK) or any other country or territory that we may from time to time notify you that the Services may not be resold into;

Service

a service that we offer you the opportunity to resell to your Customers;

Service Specific Terms

the terms applicable to a particular Service, which may be updated from time to time, will be made available to you within the Operator Portal and will comprise as applicable a service schedule to this Agreement.

Territory

the countries or regions in which you are entitled to resell a particular Service, as set out in the applicable Service Specific Terms.

- 1.1.1 Headings are included for convenience only and shall not affect the construction or interpretation of this agreement.
- 1.2 Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.
- 1.3 Any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.
- 1.4 The words **include, includes, including** and **included** and like words and expressions will be construed without limitation unless inconsistent with the context.
- 1.5 Any reference to law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean the same as shall be amended, enacted, replaced, extended, modified, consolidated or repealed from time to time.

2. APPOINTMENT AS A WHOLESALE

- 2.1 We hereby appoint you as a non-exclusive Wholesaler of the Services to your Customers in consideration of your agreement to these terms.
- 2.2 Your appointment takes effect as soon as this agreement has been signed by you and continues in effect until this agreement is terminated as described in clause 10.
- 2.3 During the term of your appointment, you may make as many or as few sales of Services as you wish. We do however reserve the right to refuse to provide Services to any particular Customer in our absolute discretion if we feel it inappropriate to do so for any reason and you must not make any further sales without our express written permission once either you or we have served notice to terminate this agreement for any reason.
- 2.4 You may resell the Services anywhere that falls within the authorised Territory for the applicable Service. This means that you may resell a Service to a Customer whose principal place of business is within the applicable Territory for that Service, but not to a Customer based outside the Territory, and that you must not market a Service or actively seek Customers for a Service outside its applicable Territory. However, you must never resell any Service within a Prohibited Territory, whether or not that Prohibited Territory would otherwise fall within the defined Territory for that Service.
- 2.5 We offer our Services on a "white label" basis, so you do not have to let your Customers know that we are the provider of the Services. However, if you do refer to us you must make clear that you are acting as our Wholesaler and not as our agent or representative, and you should not suggest that you are entitled to bind us in any way.
- 2.6 We generally expect that you will be reselling our Services directly to the end-user Customers. If you want to sell the Services through a sales or marketing agent or to a sub-Wholesaler or distributor please provide us with full details and we will consider your request and confirm in writing whether or not it is approved. You must not resell via a third party unless and until you have received our approval.
- 2.7 You must ensure that all information that you have given us prior to entering into this agreement or that you give us during the term of this agreement is accurate, complete and not misleading (including information you give us about you, your identity and contact details, your business, your anticipated usage of the Services and about your Customers). If anything changes so that information you have provided is no longer accurate, complete and not misleading you must update that information immediately.
- 2.8 Where you wish to obtain a Service from us, you must obtain it directly via the Operator Portal and not through another of our Wholesalers.

3. ORDERING SERVICES

- 3.1 Once you are appointed as a Wholesaler, we will grant you access to our Operator Portal. You will then be able to select Services to offer to your Customers. Once you have made your initial selection you are entitled to add or remove Services at any time by selecting the relevant option in Operator Portal.
- 3.2 Each Service is subject to its own Service Specific Terms. You may review any of our Services without any obligation to activate it. If you do choose to activate a Service, the Service Specific Terms applicable to that Service will be sent to you by the onboarding team for approval, displayed on-screen, which should be read carefully and confirm whether or not you agree to them. If you do not accept the relevant Service Specific Terms then we will not be able to offer that Service to you, but this will not affect your right to offer our other Services (provided you agree to the Service Specific Terms for those Services).
- 3.3 Once you accept Service Specific Terms, those terms will form part of this agreement as if they were set out in this document, and a breach of those terms will be considered a breach of this agreement. If a term in the Service Specific Terms conflicts with a term in this document, it is the term in the Service Specific Terms that will apply.
- 3.4 Once you have selected a Service via the Operator Portal and agreed to the Service Specific Terms, we will provide that Service to you for you to resell to your Customers. You will have the right to grant licences to your Customers to use the Service subject to the terms of this agreement.
- 3.5 You must provide us with full details of any Customers to which you provide the Services, including their full corporate or legal name.
- 3.6 It is your responsibility to ensure that the facilities and functions of the Services meet your requirements (and either to ensure that they meet the requirements of your Customers or to expressly require your Customers to ensure that they meet their requirements). We are not responsible for ensuring that the Services meet requirements or providing facilities or functions except to the extent that we have expressly told you in writing that the Services meet those requirements or provide those facilities or functions.

4. PROVISION OF THE SERVICES

- 4.1 We will use reasonable skill and care to ensure that each Service is properly managed and is provided to the standard that would be reasonably expected from a competent provider of services of the nature of that Service, but please be aware that due to the complex nature of the Services and of public telecommunication networks in general we cannot guarantee that the Services will be provided without interruption or error.
- 4.2 The speed at which data is transmitted to and from the Services is largely dependent on factors which are outside our and our suppliers' control, such as capacity constraints of the public telecommunications network and the speed of your and your Customers' computer systems. Unless otherwise expressly stated in Service Specific Terms we cannot therefore guarantee any particular response times.
- 4.3 If you become aware of a fault with any of our Services, you agree to report that fault to our technical helpdesk without delay, and we will then use reasonable endeavours to correct that fault as soon as reasonably practicable.
- 4.4 From time to time we may need to temporarily suspend provision of the whole or any part of the Services to enable us to carry out repairs, maintenance or improvement of the Services or to address an emergency. Where practicable we will provide advance notice of a suspension, but this may not always be possible in the event of an emergency or urgent maintenance. We will restore the Services as soon as reasonably

practicable following any suspension.

- 4.5 The ability to utilise the Operator Portal and the Services requires a working knowledge of the Internet, the web and email communication functions. It is your responsibility to ensure that you have the appropriate knowledge, experience and expertise and that you have put in place and appropriately maintained the telecommunications facilities necessary to enable you to access the Operator Portal and Services and configure your systems correctly, including enabling files and email to be received and transmitted correctly using the Services.

5. **ACCEPTABLE USE**

- 5.1 We calculate our Fees and plan our capacity on the basis that our Wholesalers and their customers will use the Services in a fair and reasonable manner. For the benefit of all Wholesalers and customers it is therefore a condition of this agreement that you comply with, and that you ensure that your Customers and your and their employees, agents and sub-contractors comply with, the provisions of this clause 5.
- 5.2 You must comply with any specific terms applicable to any Service, including any usage limits or restrictions. We may change usage limits or restrictions from time to time on notice to you.
- In addition (whether or not there is a specific usage limit for the Service) you must not use any Service in an excessive, unusual or unexpected manner or for a purpose other than which it is intended.
- 5.3 The Services by their nature have finite storage, speed, resilience and operating capacity which must be shared between our Wholesalers and their customers. Whilst we will endeavour to meet expected normal demand, if we do not have sufficient capacity to meet demand at any time we may have to place restrictions on the usage of the Services to help maintain the stability and continued availability of the Services as far as possible. This ability to manage our capacity allows us to keep our Fees at a reasonable level.
- 5.4 You agree that you will ensure that your use of the Services and that of your Customers and of your and their employees, agents and sub-contractors will only be for lawful purposes and will not violate any applicable law, regulation, code of practice or guidance.
- 5.5 You must not copy, rent, sublicense, display, reverse engineer, modify or alter any software owned or developed by us or our suppliers, except to the extent expressly permitted by the terms of this agreement or to the extent that such activities cannot be prohibited by law (and you must impose the same requirement on your Customers).
- 5.6 The Services must not under any circumstances be used in any way to:
- 5.6.1 infringe the intellectual property or other rights of any third party;
 - 5.6.2 threaten, harass, stalk, abuse, disrupt or otherwise violate the rights of others;
 - 5.6.3 engage in illegal or unlawful activities; or
 - 5.6.4 transmit spam or distribute viruses or otherwise deliberately abuse any part of the Service.
- 5.7 The Services are not fault tolerant and are not designed for use in applications in which failure could lead to death, personal injury, physical, property or environmental damage, disruption of a supply of money, food, water, energy or fuel, disruption of a system of communication, disruption of facilities for transport, disruption of services relating to health or serious economic damage either generally or to you, one or more of your Customers or to any third party. You must not resell any Service to a Customer where you consider that an incident of a type described in this clause 5.7 may occur if there was a fault with the Service.

6. ACCESS AND SECURITY

- 6.1 We (and/or our suppliers) will provide you with usernames, passwords and any other necessary log-in details to access the Services and the Operator Portal. You must ensure that you and each of your Customers keep all usernames, passwords and any other such log-in details secure and not disclose them to any third party other than (where applicable) your Customers and your and their employees, agents and sub-contractors. You must notify us immediately if you suspect that anyone else knows any such usernames, passwords and/or other log-in details.
- 6.2 You will be responsible for any use of the Services and/or Operator Portal which occurs using any of your usernames and passwords, unless it can be shown that the use was unauthorised use by a third party who acquired the username(s) and password(s) as a result of our negligence or unauthorised disclosure by one of our employees.
- 6.3 If you have access to Customers' passwords, you agree to use these only as necessary to provide the Services and not to view a Customer's emails, files or other private information without their permission. You must at all times comply with your obligations under data protection legislation and any other applicable law.
- 6.4 We will use reasonable endeavours to keep our Services, and the information held on our Services, secure.
- 6.5 We will also use reasonable endeavours to ensure that any emails or other content that we send to you will be free of viruses and malicious code. However, unless otherwise expressly stated in a Service specification or Service Specific Terms we do not agree to provide you with virus checking facilities and we cannot therefore guarantee that any content, particularly third-party content that may be accessible via the Services, is free from viruses or other harmful code.

7. ARCHIVES AND BACKUPS

- 7.1 Unless the Service specification or Service Specific Terms expressly state that a Service includes archive or backup facilities (or the nature of the Service is archive or backup facilities) then you should assume that no such services are included and should arrange your own backup facilities (or procure that your Customers do so). You should not treat a Service as being suitable for use as an archive or backup facility unless we have expressly stated that it is intended to be used in this manner.
- 7.2 Where the Services include (or are exclusively) services that are marketed as archive or backup facilities then such services are intended to be used as a service of last resort and not as the primary storage location for that data. If any particular data being stored is important to you or your Customer then an additional alternative backup service should be arranged as the main back-up location and if both the primary storage location and the main backup fails then recovery from our archive and backup facilities shall be on a reasonable endeavours basis.

8. FEES AND PAYMENT

- 8.1 You agree to pay the:
- 8.1.1 Fees as specified within the Operator Portal; and
 - 8.1.2 The Service Fee.
- 8.2 We will issue a single monthly invoice by the 6th of each calendar month for the Services consumed in the previous calendar month, and this invoice will cover the Fees for all Services active at this time. Unless otherwise stated in Service Specific Terms, Fees are invoiced in arrears.

- 8.3 Each invoice must be paid within 30 days of the date of issue and can be paid via any of the available payment methods that we notify you of from time to time. .
- 8.4 If you terminate a Service part way through a month you will still be liable for the full Fees for that month or contracted to a minimum contract term for a specific service. However, please check the Service Specific Terms for each Service you select as you may incur additional fees e.g. early disconnection or porting away fee's.
- 8.5 If any payment is not made by the due date then, in addition to any other remedies we may have, we will be entitled to (a) suspend any or all of the Services, (b) terminate this agreement,
- (c) charge interest on overdue sums at a rate of 2% per month (compounding monthly) and/or
- (d) recover from you on an indemnity basis any costs we incur in seeking to recover the overdue amount (including legal fees, court fees and other expenses).
- 8.6 Unless otherwise stated, our Fees and charges are expressed exclusive of VAT, which is payable in addition.
- 8.7 We may change our Fees from time to time and the new Fees will take effect from the next payment date.

9. CUSTOMERS

- 9.1 It is your responsibility to enter into appropriate contracts with your Customers and use all reasonable endeavors or omit to do anything that would put you in breach of this agreement. You must ensure that each Customer contract as a minimum:
- 9.1.1 restricts use of the Service to the Customer and its employees and requires that the Service be used only for the Customer's internal business purposes and prohibits the Customer from re-selling the Service or allowing any third party to have access to the Service;
- 9.1.2 requires the Customer to comply with the acceptable use requirements in accordance with clause 5;
- 9.1.3 provides that the contract is automatically and immediately terminated in the event that this agreement terminates for any reason;
- 9.1.4 confirms that no intellectual property rights transfer to the Customer and requires that any related intellectual property rights be used only in accordance with the licence;
- 9.1.5 if you have identified us to the Customer as the supplier of the Services, confirms that the Customer has no direct relationship with us and requires that (save to the extent such a requirement would be prohibited by law) any claim that the Customer has must be brought against you and not us;
- 9.1.6 contains confidentiality obligations equivalent to those contained in clause 14 to protect any of our or our suppliers' information that may come into the Customer's possession;
- 9.1.7 obtains any consents necessary for us to provide these Services, including for us to exercise the rights and fulfil the obligations set out in clause 15; and
- 9.1.8 contains any other terms as may be required by any applicable Service Specific Terms.
- 9.2 You agree that you will monitor each Customer's compliance with the terms of your contract with that Customer and that you will notify us if you believe that a Customer has committed any material breaches to the contract or otherwise committed an

unlawful act or omission in respect of it where that breach or unlawful act either (a) was connected to a term that you are required to impose in accordance with clause 9.1 or (b) otherwise may have an impact on us or any of our suppliers. Where this happens, you will take such steps as are necessary to resolve the issue to our reasonable satisfaction, including where appropriate terminating your contract with that Customer.

- 9.3 If you fail to impose on any Customer any term that you are required to impose by clause 9.1 then:
 - 9.3.1 you are directly responsible to us for ensuring that the Customer complies with that term and any action or omission by a Customer that would, had the term been imposed, have constituted a breach of that term shall be considered a breach of this agreement by you; and
 - 9.3.2 you will indemnify us against all reasonable losses, damages, claims, costs and expenses (including legal expenses) that we suffer or incur or that are awarded against us as a result of or otherwise in connection with your failure to comply with clause 9.1.
- 9.4 Due to the nature of the Wholesaler relationship, we will not have any direct contractual relationship with your Customers, nor will we usually have any direct contract with them. If a Customer requires support then unless otherwise agreed the Customer must first approach you and you should seek to resolve the issue yourself. If you are unable to resolve the issue then you should refer it to us through our helpdesk.

10. **TERMINATION**

- 10.1 You have no minimum commitment under this agreement and may select or deselect any Services at any time through the Operator Portal.
- 10.2 If you wish to permanently terminate your appointment as a Wholesaler you may do so by deselecting all Services and terminating all existing Customer contracts and confirming to us in writing that you have done so and that you no longer wish to be a Wholesaler, in which case this agreement shall terminate. Please be aware of any fees as outlined in clause 8.
- 10.3 Without prejudice to any other right or remedy available to us, we may at any time withdraw a particular Service or cease to offer that Service to you:
 - 10.3.1 (where you become subject to any of the circumstances described in clause 10.6.2) entirely or in respect of one or more of your Customers immediately by giving you written notice; or
 - 10.3.2 Where a Customer notifies Voiceworks that it is experiencing an Unacceptable Level of Support or Contact from the Wholesaler, Voiceworks may issue a Remediation Notice to the Wholesaler specifying the issue.
 - 10.3.3 The Wholesaler shall have fourteen (14) Business Days from receipt of the Remediation Notice to remedy the issue to the reasonable satisfaction of both the Customer and Voiceworks.
 - 10.3.4 During the remediation period Voiceworks may, where reasonably necessary to protect service continuity, security, regulatory compliance or customer welfare, engage directly with the Customer to assist in resolving the issue.
 - 10.3.5 Any such engagement shall not, of itself, create a direct contractual relationship between Voiceworks and the Customer, nor transfer ownership of the Customer relationship from the Wholesaler. (in any other circumstances) entirely or in respect of one or more of

your Customers on not less than 30 days' written notice, provided that any exercise by us of any of our rights under this clause 10.3 will not affect your entitlement to receive any other Services that you have selected.

- 10.4 Your right to receive a Service will also automatically terminate if and to such extent as our right to provide that Service to you ends (for example as a result of our agreement with our supplier terminating in respect of any or all Customers).
- 10.5 We may terminate your appointment as a Wholesaler (and therefore this agreement) at any time on not less than 30 days' written notice.
- 10.6 We may also terminate your appointment as a Wholesaler (and this agreement), or terminate the availability of any particular Service(s) to you, if:
 - 10.6.1 you commit any breach of this agreement (which, in the case of a breach capable of remedy, you fail to remedy within 14 days of a request to do so, or in the case of a breach not capable of remedy, immediately);
 - 10.6.2 you convene a meeting of your creditors or any of them or pass a resolution for winding up or suffer a petition for winding up or have an administrative receiver or receiver appointed over the whole or part of your assets or suffer the appointment of an administrator or go into liquidation or in our reasonable opinion are unlikely to be able to pay your debts as they fall due;
 - 10.6.3 you provide (or we discover that you have provided) us with misleading or inaccurate information;
 - 10.6.4 we are directed by any competent authority to suspend or cease providing the Services (or any part of them) to you;
 - 10.6.5 any invoice remains unpaid for more than thirty (30) days and you fail to remedy such non-payment within a further ten (10) business days following written notice from us expressly stating our intention to terminate this Agreement unless payment is otherwise made in the requested timeframe; or
 - 10.6.6 there is a change of Control of the Wholesaler that materially and adversely affects our interests for example you are bought by a competitor of ours.
- 10.7 Some of the Services that we offer may provide for run-off periods or other transition services upon the termination of the Service. Where a Service is terminated for any reason we may in our discretion offer such transition services to you (although these will generally not be available where your appointment as a Wholesaler or the availability of a Service was terminated pursuant to clause 10.6). Where transition services are offered, the Service will continue to be governed by the terms of this agreement (and any relevant Service Specific Terms) for the duration of those transition services.
- 10.8 In addition to our right to terminate the agreement in accordance with clause 10.6, we may suspend any part of the Services (in respect of any or all Customers) if:
 - 10.8.1 we have reasonable grounds to believe that an event of a type described in clause 10.6 has occurred;
 - 10.8.2 there is an emergency and we are unable to contact any of your emergency contacts within thirty minutes of attempting to do so; or
 - 10.8.3 there is an actual or suspected security breach.

If we suspend the Services as described in this clause 10.8 we will remove the suspension and reactivate the affected Services as soon as reasonably practicable once we are satisfied that the issue which gave rise to the suspension has been

resolved.

- 10.9 Without prejudice to any other right or remedy available to us, in the event that (i) you become subject to any of the circumstances described in clause 10.6.2, or (ii) any Customer notifies us of an unacceptable level of support or contact in connection with any Service, the following remediation process shall apply: we may suspend any part of the Services (in respect of any or all Customers) if:
- 10.9.1 Except in the event of an emergency, security incident, regulatory requirement or actual service outage, Voiceworks shall first issue a Rectification Notice and provide the Wholesaler with fourteen (14) Business Days to remedy the matter. We have reasonable grounds to believe that an event of a type described in clause 10.6.2 has occurred;
 - 10.9.2 If the unresolved after the Rectification Period, Voiceworks may:
 - (a) contact affected Customers directly for the sole purpose of maintaining service continuity and protecting the integrity of the Services;
 - (b) provide support directly to affected Customers;
 - (c) charge the Wholesaler its reasonable and documented costs incurred in providing such support; and
 - (d) require the Wholesaler to provide reasonable cooperation necessary to facilitate continuity of service, subject always to applicable data protection laws.
 - 10.9.3 Direct Arrangement: If, following our Direct Intervention, we determine that the Customer relationship is no longer viable through you, we will be free to contact such Customers to investigate whether they wish to become direct customers of ours or be referred to an alternative Wholesaler. In such an event: (a) We may enter into direct arrangements with such Customers without any liability or further commission obligation to you; and (b) You shall provide all necessary assistance to ensure a seamless transition for the Customer.
- 10.10 You agree to, upon your access to any Service being removed in respect of you and/or any Customer(s) (for whatever reason), confirm to us that all installed instances of the Service (including any related user manuals) have been removed and uninstalled from your and each such Customer's machines and devices.

11. **INTELLECTUAL PROPERTY RIGHTS**

- 11.1 The intellectual property rights in the Services are owned by us or our licensing partners. Nothing in this agreement is intended to transfer any intellectual property rights to you or your customers and you agree that you will not copy, redistribute, publish, modify or revise any part of the Services without our prior written consent.
- 11.2 You must:
- 11.2.1 only use the Voiceworks UK Ltd Branding so far as is necessary for the purpose of exercising your rights and performing your obligations under this agreement;
 - 11.2.2 obtain our prior written approval prior to any use of the Voiceworks UK Ltd Branding and use it only in the manner and the form that we have approved;
 - 11.2.3 not do or omit to do anything that may prejudice the distinctiveness, reputation or validity of the Voiceworks UK Ltd Branding or damage the

- goodwill associated with it;
- 11.2.4 not do or omit to do anything which would damage our reputation or goodwill or that of our Services or licensing partners; and
- 11.2.5 not use any mark or name which is similar to the Voiceworks UK Ltd Branding or otherwise likely to cause confusion or deception.
- 11.3 You shall at our expense take all such steps as we may reasonably require to assist us in maintaining the validity and enforceability of the Voiceworks UK Ltd Branding and any intellectual property rights in the Services and shall at our request execute any such further agreements and licences as we may require regarding ownership and use of such intellectual property rights to give effect to the terms of this clause 11.
- 11.4 You must immediately notify us if you become aware of any allegation that the use of the Voiceworks UK Ltd Branding or the Services in any applicable Territory infringes the intellectual property rights or other rights of any third party and in such case (or in the case that we become aware of any alleged infringement) you shall at our request and expense do all such things as may be reasonably required to resist any proceedings alleging infringement.

12. LIABILITY

- 12.1 Whilst we will endeavour to provide the Services in accordance with this agreement, due to the nature of the Services issues may occur from time to time, and you should put and maintain in place reasonable safeguards to avoid, reduce or remedy possible losses in the event that something does go wrong.
- 12.2 We cannot accurately assess the value of the data uploaded to the Services or the losses that may be suffered by you or your Customers if there was a problem with the Services. It is your responsibility to ensure that you and your Customers do not use the Services in a manner which may give rise to losses exceeding the amounts that we may be liable for in accordance with this clause 12 or, if you or they do, to ensure that you have apportioned responsibility for any losses in excess of what you may recover from us between you and your Customer in an appropriate manner.
- 12.3 We have calculated the Fees on the basis that our liability will be limited as described in this clause 8 & 12. You must consider these limits carefully in respect of each Service before you select it via the Operator Portal and only add that Service if you are comfortable that the level and scope of our liability to you is reasonable having regard to all of the circumstances and that you can address any excess liability you may have, including by ensuring that you have appropriate insurance cover in place.
- 12.4 We appreciate that there may be some circumstances in which it would be beneficial for you if we accepted greater levels of liability. In this case, please let us know in writing what your requirements are and we will consider, in our discretion, taking out additional insurance cover to allow us to offer the requested levels of liability. Please be aware that if we agree to this it will be subject to your agreement to pay the premiums on the additional insurance cover, and that the increased limits on liability will only take effect once we confirm to you in writing that we have done so.
- 12.5 You acknowledge that our relationship is with you and not with your Customers, and therefore that any claim your Customers may have should be brought against you and not directly against us, regardless of the cause of that claim. If despite this any of your Customers brings a claim against us (whether in contract, tort (including, but not limited to, negligence) or strict liability or otherwise) then you agree to indemnify us against all reasonable losses, damages, claims, costs and expenses (including legal expenses) that we suffer or incur as a result of that claim, including any amount that may be awarded to the Customer. This only relates to claims brought directly against us by a Customer and does not prevent you from claiming against us for liabilities you suffer to a Customer as a result of our default.
- 12.6 You agree to indemnify us against all reasonable losses, damages, claims, costs and expenses (including legal expenses) that we suffer or incur or that are awarded against us as a result of any breach of any of your obligations under this agreement or any act or omission of any of your Customers.
- 12.7 To ensure that you and we are both clear on our responsibilities to each other, we have set these out in full in this agreement. Any warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are therefore expressly excluded to the fullest extent permitted by law.

YOUR ATTENTION IS PARTICULARLY DRAWN TO CLAUSES 12.8 TO 12.10

- 12.8 For the purposes of clause 12.9, a **Contract Year** is a 12 month period, the first Contract Year commencing on the date of this agreement and each subsequent Contract Year commencing on an anniversary of that date.

- 12.9 Except as provided by clauses 12.10, 12.11, and 12.12 below, each party's total aggregate liability to the other in respect of all causes of action arising out of or in connection with this agreement [...] in any particular Contract Year is capped as follows:
- 12.9.1 Special Damages (Data & Confidentiality): Total liability for all causes of action arising under clauses 14 (Confidentiality) and 15 (Data Protection) shall not exceed 150% of the Fees paid or payable in respect of the Services during the applicable Contract Year.
 - 12.9.2 Service-Specific Liability: Subject to clause 12.9.1, total liability arising in respect of any particular Service shall not exceed 100% of the Fees paid or payable for that particular Service during the applicable Contract Year.
 - 12.9.3 General Aggregate Cap: Subject to clauses 12.9.1 and 12.9.2, total aggregate liability for all other causes of action shall not exceed 100% of the total Fees paid or payable during the applicable Contract Year.
- Any cause of action arising after the termination of the agreement shall be treated for the purposes of this clause 12.9 as if it arose in the final Contract Year and 12.9.3 shall apply accordingly.
- 12.10 Except as provided by clause 12.11 below, neither party will be liable to the other for any claim to the extent that it relates to loss or corruption of data, loss of profits, revenue, goodwill, business opportunity... [etc]. Provided that this clause 12.10 shall not apply to: (a) any Fees, interest, or other charges properly due and owing by the Wholesaler to the Supplier; or (b) any indemnity provided by the Wholesaler under Clause 9.3.2.
- 12.11 Nothing in this agreement shall limit or exclude either party's liability for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation, and/or for any other loss or damage the exclusion or limitation of which is prohibited by English law.

13. **CHANGES**

- 13.1 Given the nature of the Services we provide, they are likely to evolve over time to take account of developments in technology, to add new features, to address overall customer demand, market requirements and other commercial considerations and/or to reflect changes in the law. You should therefore be aware that Service specifications may change from time to time and we cannot guarantee that the functionality and features of a Service at the time you initially select it will continue to be available or will remain unchanged for the duration that you wish to make use of that Service. It is your responsibility to monitor updates to the Services to ensure that the specification remains acceptable to you and that they continue to meet your and your Customers' requirements.
- 13.2 We may also from time to time update this agreement. Where we do so we shall either provide you with notification of the terms that we are changing or provide you with an updated copy of the affected parts of the agreement (this document and/or any affected Service Specific Terms). We shall also notify you of the date on which the updated terms take effect, which will be at least 30 days from the date on which we notify you of the change (unless we are required to make the change by law or by a supplier, in which case if we cannot give you 30 days' notice we will give you as much notice as reasonably practicable) and the revised terms shall automatically take effect from the date we specify. If any such update materially disadvantages you, you may notify us within 30 days of our notice that you wish to terminate this agreement, and such termination shall take effect on the date the updated terms would have otherwise applied, without any further liability to you (save for Fees incurred up to that date).

- 13.3 If you are dissatisfied with any changes to the Services as described in clause 13.1 or any changes to the agreement as described in clause 13.2 you may either deselect the affected Service(s) through the Operator Portal or terminate your appointment as a Wholesaler in accordance with clause 10.2. Provided that your termination takes effect before the date on which any new terms take effect the new terms will not apply to you and any post termination rights or obligations shall be governed by the terms that were in effect on the date your termination took effect.

14. **Invoice Disputes**

Any query or dispute relating to an invoice must be submitted to Voiceworks in writing within six (6) months of receipt of the applicable invoice. After this period, the invoice shall be deemed accepted, and the Service Provider waives any right or remedy it may otherwise have to dispute or query the invoice.

Any dispute notice must clearly set out the invoice and amount being disputed, the grounds for the dispute, and any supporting evidence or documentation.

Voiceworks shall provide a response to the Service Provider within thirty (30) calendar days of receiving the dispute notice.

The submission of an invoice dispute does not relieve the Service Provider of its obligation to pay any undisputed amounts by the applicable payment due date.

In the event of a payment dispute, both Parties shall use reasonable endeavours to resolve the matter in accordance with this clause, without affecting or compromising their other contractual rights and obligations.

Where the Parties resolve the dispute and an amount becomes payable as a result of that resolution, the relevant payment shall be made within two (2) weeks of the date on which the dispute is resolved.

15. **CONFIDENTIALITY**

- 15.1 You and we each undertake not to at any time disclose to any third party any confidential information (being any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with this agreement), nor use such information for any purpose other than to exercise our respective rights and perform our respective obligations under this agreement, except as otherwise permitted by this agreement or with the prior written consent of the other.

- 15.2 The provisions of this clause 14 shall not apply to any confidential information that the receiving party can demonstrate:

- 15.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this agreement or any other obligations of confidentiality;
- 15.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect to it;
- 15.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
- 15.2.4 was developed independently of and without reference to confidential information disclosed by the other party,

provided always that, except where it is prohibited from doing so by law or court order, a party wishing to rely on an exception contained in this clause 14.2 shall provide the other with at least ten (10) days' written notice of its intention to do so, such notice

specifying details of the exception to be relied upon and the information concerned.

- 15.3 You and we shall be entitled to divulge the other's confidential information to our respective employees, agents, directors, officers, authorised sub-contractors, auditors, professional advisors and consultants who have a need to know the same in connection with this agreement, provided that the receiving party shall ensure that such persons are aware of, and shall procure that such persons comply with, these obligations as to confidentiality.
- 15.4 Any transfer of customer data or contract rights shall be subject to Wholesaler's compliance with applicable data protection laws, and nothing in this clause 14 shall require the Wholesaler to transfer proprietary customer information where prohibited by law or contract.

16. DATA PROTECTION

- 16.1 We take the security of personal data very seriously and will only process any personal data that you provide to us (or that you allow your Customer or another third party to provide to us) in accordance with this clause 15.
- 16.2 You and we each agree that, in the performance of our respective obligations under this agreement, we shall each at all times comply with the provisions of the Data Protection Act 2018 (in this clause 15, referred to as the DPA) and, (until such time as the same ceases to have effect in the UK), the General Data Protection Regulation (GDPR), together with any other law applicable to the protection of personal data in effect from time to time (together, Data Protection Legislation), in each case so far as they apply to you or us (as applicable). Where used in this clause 15, the expressions process, personal data, data controller, data processor and data subject shall bear their respective meanings (or their corresponding equivalent meanings) given in Data Protection Legislation.
- 16.3 For the purposes of Data Protection Legislation:
- 16.3.1 we may process a wide variety of types of personal data relating to your and your Customers' employees, contacts and other data subjects on your behalf to enable us to provide the Services to you during the term of each Service, and where we do so we will be the data processor of that personal data (**Processor Personal Data**); and
- 16.3.2 where we process any personal data in our own capacity, meaning that it has been provided to us in circumstances where we are to determine the purposes and means of the processing (for example, you give us your personal contact details to get in touch with you in an emergency), we will be the data controller (**Controller Personal Data**).
- 16.4 You must only provide us with, or allow a third party to provide us with, personal data which you are authorised to provide to us and (for Processor Personal Data) in respect of which you are authorised to appoint us as a data processor (where you are not the data controller in respect of that personal data, you must have the consent of the data controller to appoint us and to instruct us to process that personal data as described in this clause 15). It is your responsibility to obtain the necessary consents from the data subjects (or to ensure that they have been obtained).
- 16.5 You agree that the processing by us of Controller Personal Data for the purposes for which you have given it to us, or of Processor Personal Data in accordance with your instructions and the provisions of this clause 15, will not contravene any Data Protection Legislation or other law, regulation, code of practice or guidance, will not infringe any third party's rights and will not otherwise cause us to incur fine, penalty or charge or any liability to any party, and you agree to indemnify us for all losses, damages, claims, costs and expenses (including legal expenses) that we suffer or incur or that are awarded against us as a result of any such processing of the personal data.

- 16.6 More information as to how we process Controller Personal Data is set out in our privacy statements, a copy of which we will make available to the data subjects in accordance with Data Protection Legislation.
- 16.7 Subject to clause 15.8, we will only process the Processor Personal Data provided by you in accordance with Data Protection Legislation, the terms of this agreement and your instructions as given to us from time to time.
- 16.8 If we are required by law or a regulatory body to process Processor Personal Data in a way other than as provided by clause 15.6 we will be entitled to do so. We will let you know before we do (unless we are prohibited from telling you).
- 16.9 We agree that we will:
 - 16.9.1 not under any circumstances transfer or allow the transfer of the Processor Personal Data outside the European Economic Area other than as permitted by the eighth principle or schedule 4 of the DPA / Chapter 5 of the GDPR or as described in the applicable Service Specific Terms;
 - 16.9.2 implement such security measures as required to enable the Processor Personal Data to be processed in compliance with obligations equivalent to those imposed on you / your Customer by the seventh principle of the DPA (or, once applicable, in compliance with obligations imposed on us by article 32 of the GDPR);
 - 16.9.3 notify you without undue delay on becoming aware of a personal data breach in respect of the Processor Personal Data and cooperate with you to resolve such issue; and
 - 16.9.4 at your expense, provide such assistance as you or your Customer may reasonably require to assist you or it to comply with your or its obligations to keep the Processor Personal Data secure, allow you or it to inform a regulatory authority or data subject of a personal data breach, conduct a data protection impact assessment, consult with a regulatory authority regarding the processing of Processor Personal Data and/or respond to requests made by data subjects pursuant to Data Protection Legislation.
- 16.10 From time to time during the term of this agreement we will (at your request):
 - 16.10.1 provide details in writing of our data processing activities in respect of the Processor Personal Data; and
 - 16.10.2 on reasonable notice allow you to audit our compliance with these terms (subject to any reasonable requirements or restrictions that we may impose to safeguard the personal data we hold on behalf of other Wholesalers and their Customers and/or avoid unreasonable disruption to our business).
- 16.11 On termination of this agreement we will return or delete all Processor Personal Data which was provided to us by you, your Customer, or another third party using the Services you subscribed for (and delete any copies, save to the extent retention is required by law).
- 16.12 You acknowledge that we will use the Processor Personal Data to provide the Services and that this may involve passing that personal data to our suppliers and/or allowing our employees, agents and sub-contractors to have access to that personal data, and you authorise us to appoint sub-processors from time to time to enable or assist us to provide the Services to you. Specifically, where you select a new Service through our Operator Portal you acknowledge and consent to us appointing the company which supplies that service to us as a sub-processor in respect of that Service (except where it is a Service that we host ourselves). We agree to notify you of any intended

changes concerning the addition or replacement of sub-processors.

- 16.13 Where we appoint sub-processors as described in clause 15.12, we will ensure that these parties are subject to appropriate confidentiality terms and will impose appropriate data processing obligations on that sub-processor and procure that sub-processor's compliance with such obligations (and will be liable for the acts and omissions of that sub-processor as if they were our own acts and omissions).
- 16.14 You agree that we and our suppliers may also use the Processor Personal Data (but are not obliged to do so):
- 16.14.1 to monitor compliance with the terms of this agreement and to ensure that the Processor Personal Data being stored and processed complies with the law;
 - 16.14.2 to provide support, maintain the Services and protect the stability and functionality of the Services;
 - 16.14.3 where reasonably considered necessary to protect the security and integrity of the Services; and
 - 16.14.4 for the purposes of monitoring use of, and improving and developing, the Services.

You confirm and acknowledge that the processing of the Processor Personal Data in the manner described by this clause 15.14 is necessary for the purposes of your, your Customers', our and/or our suppliers' legitimate interests.

- 16.15 We may record any telephone call that you make to or receive from us and or store any email that you send to us or receive from us and may use such recordings or emails for the purposes described in clause 15.14. You must ensure that you have notified all of your employees and representatives of the possibility of calls and emails being monitored in this manner.
- 16.16 You agree that if we reasonably consider that any data, including personal data, is unlawful or is otherwise not in compliance with this agreement then we may in our discretion refuse to process it. We may also delete any such information, save that (unless we are required by law to delete it earlier or prohibited from informing you of the intention to delete it) we will give you 72 hours' notice before we do so.
- 16.17 We take our compliance obligations very seriously and will fully co-operate with all applicable law enforcement authorities in investigating suspected illegal activity and we reserve the right to report any activity that we suspect of being illegal to the relevant authorities.

17. **FORCE MAJEURE**

- 17.1 We shall not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this agreement that is caused by events outside its reasonable control (**Force Majeure Event**).
- 17.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control which would make it impossible, impractical or materially more onerous or expensive for us to perform the affected obligations and includes in particular riot, war, acts of terrorism, fire, explosion, malicious damage, storm (including lightning strike), flood, hurricane or other adverse weather conditions, strikes and other industrial action or shortage of available staff, impossibility of the use of public or private telecommunications networks or interruption or failure of utility service, malicious activity against our computer systems (or those of our suppliers) such as unauthorised access, computer virus or denial of service attack, other illegal or unlawful actions of third parties, or non-performance by suppliers, subcontractors or agents and the acts, decrees, legislation, regulations, policy or restrictions of any

government or public authority.

- 17.3 Our performance under this agreement is deemed to be suspended for the period that the Force Majeure Event continues, and we shall have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under this agreement may be performed despite the Force Majeure Event. However, the inability to deliver continues for more than 90 days after the commencement of that failure then either you or us may terminate the affected Service(s) (or, if the whole agreement is affected, the entire agreement) on written notice to the other.
- 17.4 You shall continue to pay the Charges for the Services during the period of suspension; provided that where any single suspension of a Service initiated by us under clause 16.3 continues beyond forty-eight (48) consecutive hours, Charges shall cease to accrue for the affected Service from the end of that period until such time as the Service is restored. This shall not apply where the suspension is due to a breach by the Wholesaler or any User.

18. NOTICES

- 18.1 Each notice given under or in relation to this agreement must be in writing and either delivered by hand or sent by first class post to the recipient's nominated address or sent by email to the recipient's nominated email address.
- 18.2 We may provide service related information, such as information about downtime and pricing, via the Operator Portal. You will be deemed to have received any information posted on the Operator Portal in this way and you should therefore check the Operator regularly for important notifications.
- 18.3 The nominated address and email address for service shall be considered to be the address and email address provided for each party on the front of this agreement, or such other address or email address as may be provided for these purposes from time to time.
- 18.4 A notice shall be deemed to have been received:
- 18.4.1 in the case of a delivery made in person, when delivered;
 - 18.4.2 in the case of first class post, two working days after posting; and
 - 18.4.3 in the case of email, at the time of sending if between 9am and 4:30pm on a working day, at 9am on that day if sent before 9am on a working day or otherwise at 9am on the next working day (provided in each case that no email delivery failure notification is received).
- 18.5 This clause 17 does not apply to the service of legal proceedings or other documents in any legal action.

19. GENERAL

- 19.1 This agreement (including any applicable Service Specific Terms) constitutes the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral, relating to its subject matter. You and we each acknowledge and accept that, in entering into this agreement, no reliance has been placed upon

any representation, undertaking or promise except as set out in this agreement.

- 19.2 You and we each agree that neither of us shall have any remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. You and we also agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 19.3 The failure or delay of either you or us to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this agreement does not constitute and shall not be construed as a waiver of such term or right, remedy, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 19.4 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this agreement shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 19.5 You may not assign, transfer, sub-contract or otherwise part with the agreement or any right or obligation under it without our prior written consent. such consent not to be unreasonably withheld or delayed
- 19.6 This agreement will come into effect upon your signature and shall continue unless and until terminated in accordance with its terms.
- 19.7 Except to the extent (if any) stated elsewhere in this agreement (including any appendix hereto), nothing in this agreement shall confer any rights upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999, or otherwise.
- 19.8 Except to the extent (if any) stated elsewhere in this agreement (including any appendix hereto), this agreement (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with this agreement, save that nothing in this clause 18.8 shall limit our right to bring proceedings in any other court of competent jurisdiction.

DECLARATION AND ACCEPTANCE

You declare that you:

- have read the Wholesaler terms carefully and acknowledge that you understand them and agree to be bound by them
- appreciate that each Service is governed by Service Specific Terms, and that you will need to separately agree the Service Specific Terms for each Service that you wish to offer when you select that Service via the Operator Portal
- will carefully consider the scope of each Service before you select it and whether it is appropriate for your and your Customers' requirements and only activate it and offer it to your Customers if you are comfortable that it does
- have or will prepare appropriate Customer contracts meeting at least the requirements set out in clause 9.1 and will only provide the Services to Customers who have signed up to appropriate terms
- understand the extent of your rights and responsibilities under this agreement and particularly the limitations on our liability under clause 12 and will put in place appropriate insurance cover and other precautions to address any areas where we are not responsible or liable to you

- understand that any Services that we provide to you either do not include backup services or are intended to be used in conjunction with other backup services and agree to ensure that you have in place appropriate second-copy or alternative-copy back-up services for any data being hosted via the Services

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the date set out at the beginning of it

Signed by [Insert Name] for and on behalf of the SUPPLIER	
Signed by [Insert Name] for and on behalf of the RESELLER	