

# 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

|                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Authorised Users"</b>                                                       | those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services and the Voicescape Materials, as further described in clause 3.2.2;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>"Personal Breach"</b>         | <b>Data</b> | means a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, personal data.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Business Day"</b>                                                           | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>"Platform"</b>                |             | Voicescape's infrastructure and software platform from which the Services are accessed and administered by the Client via the Web Portal;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"Client Data"</b>                                                            | the data inputted by the Client, Authorised Users, or Voicescape on the Client's behalf for the purpose of using the Services or facilitating the Client's or an Authorised User's use of the Services, excluding Voicescape Materials;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>"Renewal Period"</b>          |             | the period described in clause 14.1;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"Client"</b>                                                                 | the client purchasing the Services as detailed in the Contract Confirmation Letter;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>"Service Specification"</b>   |             | the specification describing the Services selected in the Contract Confirmation Letter and attached to the Contract Confirmation Letter;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Confidential Information"</b>                                               | information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>"Services"</b>                |             | the services as set out in the Contract Confirmation Letter which entitles Authorised Users to access and use the Services and the Voicescape Materials in accordance with this agreement including but not limited to the Software provided by Voicescape to the Client under this agreement via the Platform and any other services described in the Contract Confirmation Letter and further detailed in the Service Specification;                                                                                                                                                                                                                               |
| <b>"Contract Year"</b>                                                          | the 12 month period from the Effective Date and each succeeding 12-month period                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>"Software"</b>                |             | the online software applications provided by Voicescape as part of the Services;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>"Customer Personal Data"</b>                                                 | means personal data processed by Voicescape on behalf of the Customer pursuant to the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>"Support Services Policy"</b> |             | Voicescape's policy for providing support in relation to the Services as made available at <a href="http://www.voicescape.com">www.voicescape.com</a> or such other website address as may be notified to the Client from time to time;                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Data Protection Legislation"</b>                                            | means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (the "UK GDPR"), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications Regulations 2003 as amended and all laws and regulations applicable to the relevant party relating to the processing of personal data under or in relation to the Agreement including, where applicable, the guidance and codes of practice issued by the Information Commissioner or any other applicable supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.. | <b>"Term"</b>                    |             | has the meaning given in clause 14.1 (being the Initial Term together with any subsequent Renewal Periods);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Effective Date"</b>                                                         | the date of this agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>"Virus"</b>                   |             | any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and |
| <b>"Contract Confirmation Letter"</b>                                           | means the letter addressed to the Client formalising the terms of the agreement between the Client and Voicescape;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>"Voicescape Materials"</b>    |             | all materials supplied or provided by Voicescape as part of the Services, including but not limited to all videos, brochures and downloadable materials.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Fees"</b>                                                                   | the fees payable by the Client to Voicescape for the Services, as set out in the Contract Confirmation Letter and further detailed in the Service Specification;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>"Voicescape"</b>              |             | Voicescape Limited (company number 10440336);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Initial Term"</b>                                                           | the initial term of this agreement as set out in the Contract Confirmation Letter;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>"Web Portal"</b>              |             | the web based application software including the administrator web portal accessed via <a href="http://www.voicescape.co.uk">www.voicescape.co.uk</a> or any other website notified to the Client by Voicescape from time to time allowing Authorised Users to access the Services.                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Normal Business Hours"</b>                                                  | 9.00 am to 5.00 pm local UK time on a Business Day;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"Personal Data", "data subject", "controller", "processor" and "process"</b> | shall be interpreted in accordance with applicable Data Protection Legislation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses are to the clauses of this agreement.

## **2 THE AGREEMENT**

- 2.1 This agreement governs the overall relationship of the parties in relation to the provision of the Services to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealings
- 2.2 If there is an inconsistency between any of the provisions in the main body of this agreement and the Contract Confirmation Letter, the provisions in the Contract Confirmation Letter shall prevail

## **3 USAGE**

- 3.1 Subject to the restrictions set out in this clause 3 and the other terms and conditions of this agreement, Voicescape hereby grants to the Client a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Voicescape Materials during the Term solely for the Client's normal business operations.
- 3.2 In relation to the Authorised Users, the Client undertakes that:
  - 3.2.1 each Authorised User shall keep any user ID or password (if required during the registration process) for their use of the Services and Voicescape Materials secure, safe and confidential;
  - 3.2.2 it shall maintain a written, up to date list of current Authorised Users and provide such list to Voicescape within 5 Business Days of Voicescape's written request at any time or times;
  - 3.2.3 it shall permit Voicescape to audit the Services in order to establish the name and unique identification code of each Authorised User, at Voicescape's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business; and
  - 3.2.4 if any of the audits referred to in clause 3.2.3 reveal that the Client has underpaid Fees to Voicescape, then without prejudice to Voicescape's other rights, the Client shall pay to Voicescape an amount equal to such underpayment as calculated in accordance with Voicescape then current services prices within 10 Business Days of the date of the relevant audit.
- 3.3 The Client shall not (and shall procure that Authorised Users do not) access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
  - 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 3.3.2 facilitates illegal activity;
  - 3.3.3 depicts sexually explicit images;
  - 3.3.4 promotes unlawful violence;
  - 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 3.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;and Voicescape reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's and/or any relevant Authorised User's access to any material that breaches the provisions of this clause.
- 3.4 The Client shall not:
  - 3.4.1.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
    - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Voicescape Materials (as applicable) in any form or media or by any means; or

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

3.4.2 access all or any part of the Services and Voicescape Materials in order to build a product or service which competes with the Services and/or the Voicescape Materials; or

3.4.3 use the Services and/or Voicescape Materials to provide services to third parties other than those permitted under the terms of this Agreement; or

3.4.4 subject to clause 16.8, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Voicescape Materials available to any third party except the Authorised Users, or

3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Voicescape Materials, other than as provided under this clause 3.

3.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Voicescape Materials and, in the event of any such unauthorised access or use, promptly notify Voicescape.

3.6 The rights provided under this clause 3 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.

3.7 Voicescape has a fair usage policy - SMS messages will be capped as part of a fair usage policy at 7,500 SMS units per year of licensing per £1,000 of annual license revenue (ex VAT). Longer messages will attract up to 3 SMS units:

Up to 160 characters: 1 message

Up to 306 characters: 2 messages

Up to 450 characters: 3 messages

All character limits must include spaces

Any messages above the fair usage policy will be billed at 10p per SMS unit and billed quarterly in arrears

#### **4. SERVICES**

4.1 Voicescape shall, during the Term, provide the Services and make available the Voicescape Materials to the Client on and subject to the terms of this agreement.

4.2 Voicescape shall use commercially reasonable endeavours to:

4.2.1 make the Services available during Normal Working Hours, except for un-scheduled maintenance provided that Voicescape has used reasonable endeavours to give the Client at least 5 Normal Business Hours' notice in advance.

4.2.2 carry out planned maintenance where reasonably possible outside Normal Working Hours.

4.3 Voicescape will, as part of the Services and at no additional cost to the Client, provide the Client with Voicescape's standard customer support services during Normal Business Hours in accordance with Voicescape's Support Services Policy in effect at the time that the Services are provided. Voicescape may amend the Support Services Policy in its sole and absolute discretion from time to time.

4.4 If the Client or any Authorised User is in breach of the terms of this agreement, without prejudice ...without prejudice to any other rights and remedies of Voicescape, Voicescape may, without liability to the Client or any Authorised User, disable the Client's and/or the relevant Authorised User's password, account and access to all or part of the Services and Voicescape shall be under no obligation to provide any or all of the Services while such breach remains unremedied or a written declaration from the Client or relevant Authorised User which is acceptable to Voicescape (acting reasonably)

4.5 Voicescapes telephony engagement services are limited to UK numbers only

#### **5. CLIENT DATA**

5.1 The Client shall (as between Voicescape and the Client) own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.

5.2 Voicescape shall follow its archiving procedures for Client Data. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for Voicescape to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Voicescape in accordance with its archiving procedure. Voicescape shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub- contracted by Voicescape to perform services related to Client Data maintenance and back-up).

5.3 The Customer warrants that it has the legal right to disclose all personal data that it does in fact disclose to Voicescape under or in connection with the Standard Terms, or the Contract.

5.4 If Voicescape processes Customer Personal Data, the parties agree that Voicescape is to be the processor and the Customer is the controller of such Customer Personal Data. The Data Processing Agreement sets out the subject-matter and duration of the processing of the Customer Personal Data, the nature and purpose of the processing, the type of personal data and the categories of data subjects. The parties may amend the Data Processing Agreement from time to time by written agreement.

5.5 Each party shall comply with its obligations under applicable Data Protection Legislation and the Customer warrants and undertakes that the Customer shall not instruct Voicescape to process the Customer Personal Data where such processing would be unlawful.

5.6 Subject to Clause 5.7 below, Voicescape shall process the Customer Personal Data only in accordance with the Customer's documented instructions and shall not transfer the Customer Personal Data outside of the United Kingdom without the Customer's consent. For the avoidance of any doubt, the processing of the data to perform the Services is an instructed processing.

5.7 Voicescape may process the Customer Personal Data other than in accordance with the Customer's documented instructions where required to do so by applicable law provided that Voicescape shall notify the Customer of such legal requirement before such processing (unless it is prohibited to do so by applicable law on important grounds of public interest).

5.8 Voicescape shall ensure that individuals engaged in the processing of the Customer Personal Data under the Agreement are subject to obligations of confidentiality in respect of such personal data.

5.9 Voicescape shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk involved in processing the Customer Personal Data pursuant to the Agreement. The security measures are set out in Schedule 3 of the Data Processing Agreement and the Customer acknowledges that the Customer has reviewed such security measures and considers them appropriate in the context of the processing of the Customer Personal Data as anticipated by the Agreement.

5.10 Voicescape may engage such other processors ("Sub Processors") as Voicescape considers reasonably appropriate for the processing of the Customer Personal Data in accordance with the terms of the Agreement (including in connection with support, maintenance and development, staff augmentation and the use of third party data centres) provided that Voicescape shall notify the Customer of the addition or replacement of such Sub Processors and the Customer may, on reasonable grounds, object to a Sub Processor by notifying Voicescape in writing within 14 days of receipt of Our notification, giving reasons for the Customer's objection. The parties shall work together to reach agreement on the engagement of Sub Processors. Voicescape shall require all Sub Processors to enter into an agreement of equivalent effect to the terms contained in Clause 5.6 to 5.9.

5.11 Voicescape shall notify the Customer immediately during Normal Business Hours once it has confirmed any form of Personal Data Breach and shall assist the Customer to the extent reasonably necessary in connection with notification to the applicable supervisory authority and data subjects, taking into account the nature of processing and the information available to Voicescape.

5.12 If a data subject exercises its rights under applicable Data Protection Legislation against the Customer, Voicescape shall use reasonable commercial efforts, to assist the Customer in fulfilling the Customer's obligations as controller following a written request from the Customer as per the terms set out in section 5 of the Data Processing Agreement.

5.13 If the Customer considers that the processing of personal data performed pursuant to the Agreement requires a privacy impact assessment to be undertaken, following written request from the Customer, Voicescape shall use reasonable commercial endeavours to provide relevant information and assistance to the Customer to facilitate such privacy impact assessment. Voicescape may charge the Customer for such assistance on a time and materials basis.

5.14 Unless otherwise required by applicable law, following termination or expiry of the Agreement Voicescape shall, at the Customer's option, delete or return all the Customer Personal Data and all copies thereof to the Customer.

5.15 Where requested by the Customer, Voicescape shall make available all information reasonably necessary to demonstrate its compliance with the foregoing Clauses 5.7 to 5.14 inclusive and where reasonably requested by the Customer (and on reasonable notice) shall contribute to audits undertaken by the Customer and/or allow the Customer to inspect records held by Voicescape in relation to the processing of personal data.

5.16 If Voicescape considers that the Customer's instructions relating to processing of the Customer Personal Data under the Agreement infringes Data Protection Legislation, Voicescape shall inform the Customer and, in such circumstances, the Customer shall re-assess the Customer's instructions and Data Protection Legislation. Voicescape shall not be obliged to process any of the Customer Personal Data until the Customer notifies Voicescape that the Customer's instructions are non-infringing or amends its instructions to make them non-infringing and notifies Voicescape accordingly.

5.17 Voicescape reserves the right to amend this Addendum on written notice to the Customer if Voicescape considers it reasonably necessary as a result of any changes in law or practice relating to the protection or treatment of personal data."

## **6. VOICESCAPE'S OBLIGATIONS**

6.1 Voicescape undertakes that the Services will be performed substantially in accordance with the Service Specification and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non- conformance which is caused by use of the Services contrary to Voicescape's instructions, or modification or alteration of the Services by any party other than Voicescape or Voicescape's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Voicescape will, at its expense, use reasonable commercial endeavours to correct any such non- conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Voicescape:

6.2.1 does not warrant that the Client's use of the Services will be uninterrupted or error-free; or that the Services, Voicescape Materials and/or the information obtained by the Client through the Services will meet the Client's requirements; and

6.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Voicescape Materials may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 This agreement shall not prevent Voicescape from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are identical and/or similar to those provided under this agreement.

6.4 Voicescape warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement

## **7. CLIENT'S OBLIGATIONS**

The Client shall:

7.1.1 provide Voicescape with:

- (a) all necessary co-operation in relation to this agreement; and
- (b) all necessary access to such information (in such form) as may be required by Voicescape;

in order to provide the Services, including but not limited to Client Data, security access information and configuration services;

7.1.2 adopt and comply with any privacy policy notified by Voicescape to the Client from time to time;

7.1.3 comply with all applicable laws and regulations with respect to its activities under this agreement;

7.1.4 carry out all other Client responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Voicescape may (at its sole discretion) adjust any agreed timetable or delivery schedule as reasonably necessary;

7.1.5 ensure that the Authorised Users use the Services and the Voicescape Materials in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement as though it was a breach by the Client;

7.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for Voicescape, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

7.1.7 ensure that its network and systems comply with the relevant specifications provided by Voicescape from time to time; and

7.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Voicescape's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

7.2 If Voicescape's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, its subcontractors, its consultants or its employees, Voicescape shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay

7.3 If Voicescape's costs increase as a result of any act or omission of the Client, its agents, subcontractors, consultants or employees in accordance with clause 7.2, Voicescape will be entitled to recover such costs from the Client subject to Voicescape confirming such costs to the Client in writing.

## **8. CHANGES TO SERVICES**

8.1 If the Client wishes to change the scope of the Services it will submit details of the requested change to Voicescape in writing.

8.2 If the Client requests a change to the scope of the Services, Voicescape shall, if it is willing to provide such amended services or subscription, within a reasonable time, provide a written estimate to the Client of:

8.2.1 the likely time required to implement the change;

8.2.2 any necessary variations to Voicescape's charges arising from the change; and

8.2.3 any other impact of the change on this agreement.

8.3 If the Client wishes Voicescape to proceed with the change, Voicescape has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this agreement to take account of the change. Once the change has been agreed, this Agreement shall be deemed to have been varied in accordance with clause 16.1.

8.4 Voicescape may amend the service descriptions or any other terms of this agreement on reasonable notice to the Client. In the event that the Client is not happy with such changes Voicescape shall (at its sole discretion) decide whether to continue to provide the Services as the Client is currently contracted or allow the Client to terminate the Services

## **9. CHARGES AND PAYMENT**

9.1 The Client shall pay the Fees to Voicescape for the Services in accordance with this clause 9.

9.2 Unless otherwise agreed in writing between the parties the Client shall pay the Fees annually in accordance with the payment terms set out in the Contract Confirmation Letter.

9.3 The Fee shall be reviewed annually, and any increase shall be effective on the commencement of the next Renewal Period. This increase would be in-line with the Retail Price Index plus 2.9%

9.4 Voicescape reserves the right to increase the Fee following any review but in any event such annual increase to the Fee shall not be greater than 10% in any Contract Year.

9.5 If Voicescape has not received any payment due under this agreement within 30 days after the due date, and without prejudice to any other rights and remedies of Voicescape:

9.5.1 Voicescape may, without liability to the Client, disable the Client's and/or any Authorised User's password, account and access to all or part of the Services and Voicescape shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

9.5.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.6 All amounts and fees stated or referred to in this agreement:

9.6.1 shall be payable in pounds sterling

9.6.2 are, subject to clause 13.4.2, non-cancellable and non-refundable;

9.6.3 are exclusive of value added tax, which shall be added to Voicescape's invoice(s) at the appropriate rate

## 10. PROPRIETARY RIGHTS

10.1 The Client acknowledges and agrees that Voicescape and/or its licensors own all intellectual property rights in the Services, Software and the Voicescape Materials. Except as expressly stated herein, this agreement does not grant the Client any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Voicescape Materials.

10.2 Voicescape confirms that it has all the rights in relation to the Services and the Voicescape Materials that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement

## 11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time (during the Term of this agreement or afterwards) disclose to any person any confidential information concerning the activities, affairs, customers, clients or suppliers of the other party, except as permitted by clause

11.2. For the purpose of this clause 11, confidential information means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of the parties for the time being confidential to the parties and trade secrets including, without limitation, technical data and know-how relating to the business of the parties or their suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential.

11.2 Each party may disclose the other party's confidential information:

11.2.1 to its suppliers, employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its suppliers, employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this agreement.

## 12. FREEDOM OF INFORMATION

12.1 The following definitions shall apply in this clause 12:

**"Code"** means the Freedom of Information Code of Practice issued under section 45 of the FOIA as may be updated or re-issued from time to time and any other relevant codes of practice published by the Cabinet Office or other relevant body.

**"Environmental Information Regulations"** means the Environmental Information Regulations 2004.

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**"Information Disclosure Requirements"** means the requirements to disclose information under:

- (a) the Code;
- (b) the FOIA; and
- (c) the Environmental Information Regulations.

**"Request for Information"** means a request for information under the FOIA or the Environmental Information Regulations.

12.2 Voicescape acknowledges that the Client is subject to the Information Disclosure Requirements and shall provide reasonable assistance and co-operation to the Client to enable them to comply with those requirements.

12.3 Where the Client receives a Request for Information in relation to information that Voicescape or any of its sub-contractors is holding on behalf of the Client, the Client shall as soon as reasonably practicable after receipt and in any event within two calendar days of receipt, forward the Request for Information to Voicescape and Voicescape shall:

- 12.3.1 provide the Client with a copy of all such information (in redacted form to remove any Exempt Information as set out under Part II under the Section 21-44 of the Freedom of Information Act 2000 that is commercially sensitive for Voicescape or its partners, affiliates, group companies or sub-contractors ("**Exempt Information**")) as soon as practicable and in any event within 10 calendar days of the Client's request; and

12.3.2 provide reasonable assistance to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, as applicable.

12.4 Voicescape acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Client may nevertheless be obliged to disclose Voicescape's Exempt Information in accordance with the Information Disclosure Requirements in certain circumstances following consultation with Voicescape and having taken its views into account, provided always that where clause 12.3.1 above applies, the Client shall, in accordance with the recommendations of the Code, take reasonable steps to draw this to the attention of Voicescape after any such disclosure.

15.5 The provisions of this Section 12 shall survive the termination of the Agreement, however arising.

### **13. INDEMNITY**

12.1 The Client shall defend, indemnify and hold harmless Voicescape against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services and/or Voicescape Materials, provided that:

13.1.1 the Client is given notice of any such claim;

13.1.2 Voicescape provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and

13.1.3 the Client is given sole authority to defend or settle the claim.

### **14. LIMITATION OF LIABILITY**

14.1 This clause 14 sets out the entire financial liability of Voicescape (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:

14.1.1 arising under or in connection with this agreement;

14.1.2 in respect of any use made by the Client of the Services and Voicescape Materials or any part of them; and

14.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

14.2 Except as expressly and specifically provided in this agreement:

14.2.1 the Client assumes sole responsibility for results obtained from the use of the Services and the Voicescape Materials by the Client, and for conclusions drawn from such use. Voicescape shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Voicescape by the Client in connection with the Services, or any actions taken by Voicescape at the Client's direction;

14.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and

14.2.3 the Platform and the Voicescape Materials are provided to the Client on an "as is" basis.

14.3 Nothing in this agreement excludes the liability of Voicescape:

14.3.1 for death or personal injury caused by Voicescape's negligence; or

14.3.2 for fraud or fraudulent misrepresentation.

14.4 Subject to clause 14.2 and clause 14.3:

14.4.1 Voicescape shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss

or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

14.4.2 Voicescape's total aggregate liability in respect of all claims (connected or unconnected) in any Contract Year in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to a sum equivalent to 1.5 times the total Fees paid for the Services in that period.

### **15. TERM AND TERMINATION**

15.1 This agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a "Renewal Period"), unless:

15.1.1 either party notifies the other party of termination, in writing, at least [90 days] before the end of the Initial Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

15.1.2 the agreement is otherwise terminated in accordance with the provisions of this agreement; and the Initial Term together with any subsequent Renewal Periods shall constitute the "Term".

15.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

15.2.1 the other party fails to pay any amount due under this agreement (or any other agreement between the parties) on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

15.2.2 the other party commits a material breach of any other term of this agreement (or any other agreement between the parties) which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

15.2.3 the other party repeatedly breaches any of the terms of this agreement (or any other agreement between the parties) in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or

15.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts; or goes into administration or liquidation either compulsorily or voluntarily (save for the purposes of solvent reconstruction or amalgamation); or the other party (being an individual) is the subject of a bankruptcy petition or order; or if a receiver or administrative receiver is appointed in respect of the whole or any part of its assets; or if either party makes an assignment for the benefit of or composition with its creditors generally; or if it ceases to trade; or threatens to do any of the aforementioned things; or if any analogous events occur with respect to either party in any jurisdiction to which it is subject.

15.3 On termination or expiry of this agreement for any reason:

15.3.1 all licences granted under this agreement shall immediately terminate and access to the Services and Voicescape Materials shall cease;

15.3.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;

15.3.3 Voicescape may destroy or otherwise dispose of any of the Client Data in its possession unless Voicescape receives, no later than 10 days after the effective date of the termination of this agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. Voicescape shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by Voicescape in returning or disposing of Client Data; and

15.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced

## **16. FORCE MAJEURE**

16.1 Voicescape shall have no liability to the Client under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Voicescape or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

16.2 If Voicescape is affected by an event of the type noted in clause 16.1, Voicescape shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for more than 3 months, the Client may terminate this agreement by giving 14 days' written notice to Voicescape. Voicescape will use reasonable endeavours to notify the Client of the occurrence of such event and its likely duration.

## **17. GENERAL**

17.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.3 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17.4 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17.6 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

17.7 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

17.8 The Client shall not, without the prior written consent of Voicescape, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

17.9 Voicescape may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.



17.10 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17.11 This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999

## **18. NOTICES**

18.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

18.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **19. GOVERNING LAW AND JURISDICTION**

19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)