

## Vivio Limited – General Terms and Conditions (updated October 2022)

### 1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in each and every Contract (as defined below):

#### **Acceptable Use Policy**

Vivio's or an applicable Third Party Supplier's acceptable use policy for all or any of the Services, as updated from time to time and made available on Vivio's website;

#### **Business Customer**

a Customer which is not a consumer, and for these purposes "consumer" means a natural person acting for purposes that are outside of his or her trade or business;

#### **Charges**

has the meaning given to it in clause 12.1;

#### **Commencement Date**

the date the Contract comes into existence in accordance with clause 2.2 of these Terms;

#### **Contract**

has the meaning given to it in clause 2.2;

#### **Customer**

the person(s), firm or company identified as the Customer in the Order Form;

#### **Data Protection Legislation**

is as defined in the Data Processing Schedule;

#### **Deliverables**

all documents, products and materials developed by Vivio or a Third Party Supplier or their agents, subcontractors, consultants and/or employees in relation to Services in any form, including computer programs, data, reports and specifications (including drafts);

#### **Delivery Point**

the place where delivery of the Goods is to take place under clause 6, as specified in the Order Form or otherwise agreed by the parties;

#### **Early Termination Payment**

the payment due following termination of the Contract by the Customer within the Minimum Service Term or any Renewal Term, as set out in clause 3.2;

#### **Goods**

the goods (including any part or parts of them) to be supplied by Vivio to the Customer in connection with the Contract, either as ancillary to the Services being delivered or being purchased outright by the Customer, including any Goods to be provided by a Third Party Supplier and any Deliverables to be provided in relation to such Goods, as set out in the Order Form;

#### **Group**

in relation to a company, that company, any company of which it is a subsidiary (its holding company) and any other subsidiary of such holding company; and each company in a group is a member of the group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to the company as it is at that time;

#### **Intellectual Property Rights**

all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer

software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Minimum Service Term**

the minimum term of the Contract which shall commence on the Service Commencement Date and shall end at the end of the period set out in the Order Form;

**Order Form**

the form prepared by Vivio in respect of a request for the Services and includes any services detailed in the proposal prepared by Vivio referred to within the Order Form;

**Pre-existing Materials**

all data, documents, software, specifications, reports, programs, information and/or other materials provided or made available by Vivio or a Third Party Supplier relating to the Services which existed prior to the commencement of the Contract;

**Product Schedule**

the specific terms and conditions applicable to each of the Services (if any), in each case accessible via [www.vivio.co.uk/terms/](http://www.vivio.co.uk/terms/) or otherwise provided with or referred to on the Order Form;

**Renewal Term**

the automatic renewal of the Minimum Service Term as set out in clause 3.1;

**Services**

the services ordered by the Customer under the Contract, including any applicable Third Party Supplier services, each as identified in the Order Form, and including any Deliverables and the supply of any Goods as each may be provided as part of the Services;

**Service Commencement Date**

subject to clause 5.2, the date that Vivio notifies the Customer that the installation and/or set up of the Services (including Goods) is complete or, in the absence of notification, the date the Customer commences use of the Services;

**Scheduled Maintenance**

any maintenance to any hardware, software, networks or systems affecting the provision or use of the relevant Services, which is notified to the Customer by Vivio in advance of such maintenance taking place;

**Terms**

these terms and conditions, accessible via [www.vivio.co.uk/terms/](http://www.vivio.co.uk/terms/);

**Third Party Supplier**

the third party selected by Vivio from time to time to perform the Services in whole or part; and

**VAT**

value added tax chargeable under English law for the time being and any similar additional tax.

**Vivio**

“we” or “our” means Vivio Limited whose registered office is at The Vault, 8 Boughton, Chester, CH3 4AG and whose registered company number is 04237192, and any reference to “us” “we” and “our” is a reference to Vivio;

## **Vivio Equipment**

any equipment, including tools, systems, cabling or facilities, owned or controlled by Vivio or its Third Party Supplier and used or made accessible to the Customer directly or indirectly in the supply of Services;

## **2. APPLICATION OF TERMS**

2.1 These Terms shall apply to and be incorporated into the Contract. If there is any inconsistency between these Terms and the terms contained in the Order Form or the Product Schedules, the following order of precedence shall apply to the extent of such inconsistency: the Order Form, followed by the Product Schedules, followed by these Terms.

2.2 An Order Form should not be accepted by a Customer who is not a Business Customer. The Customer's acceptance of the Order Form constitutes confirmation by the Customer that it is a Business Customer and an offer by the Customer to purchase the Services. No offer placed by the Customer shall be accepted by Vivio other than:

2.2.1 by an Order Form being countersigned by Vivio;

2.2.2 by Vivio confirming via email its acceptance of an Order Form signed by the Customer; or

2.2.3 by Vivio starting to provide the Services,

whichever is earlier, upon which a binding contract for the supply and purchase of the Services on these Terms and the terms of the Order Form (including any relevant Product Schedules) will be established (a "**Contract**").

2.3 These Terms and the documents referenced herein apply to the Contract, to the exclusion of all other terms that the Customer may seek to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.4 The Contract constitutes the entire agreement between the parties in relation to its subject matter. The Customer acknowledges that it has not relied on any warranty, statement, promise or representation made or given by or on behalf of Vivio which is not expressly set out in the Contract.

## **3. TERM**

3.1 Each of the Services begins on the relevant Service Commencement Date and shall continue unless and until terminated in accordance with the Contract, including the provisions of these Terms. Following the expiry of the Minimum Service Term, the Contract and relevant Services will automatically renew for further successive 12 month terms (each a "Renewal Term"), unless either party provides the other with notice to terminate in writing at least 90 days prior to the end of the then current Minimum Service Term or Renewal Term.

3.2 If the Customer wishes to terminate the Contract during the Minimum Service Term or any Renewal Term, it may (subject to clause 3.3) do so by providing written notice to Vivio ("**Early Termination Notice**"). Upon termination pursuant to this clause 3.2 or where Vivio terminates the Contract during the Initial Term or any Renewal Term pursuant to clause 9.1, the Customer shall pay to Vivio an amount equal to the balance of Charges that would otherwise have been due from the Customer for the remainder of the Minimum Service Term or Renewal Term (as appropriate) ("**Early Termination Payment**"). In the event that Charges are based on usage of the Services and/or rebates rather than recurring charges, the Early Termination Payment shall be calculated by Vivio by reference to the average monthly usage charge and/or rebate paid to the Customer by Vivio during the Minimum Service Term or Renewal Term (as appropriate) up to the date the Customer serves the Early Termination Notice or the date for termination specified in the Early Termination Notice (if later).

3.3 Within thirty (30) days of receipt of an Early Termination Notice, Vivio shall confirm in writing the amount of the Early Termination Payment due from the Customer. In order for the Customer's Early Termination Notice to be effective, the Customer must accept and pay the Early Termination Payment in full in cash or cleared funds. If the Customer no longer wishes to terminate the Contract, the Customer may revoke the Early Termination Notice by notifying Vivio in writing.

- 3.4 If the Customer does not revoke the Early Termination Notice and the Early Termination Payment is not made within 14 days of the date of Vivio's written notice confirming the amount of the Early Termination Payment, Vivio shall be entitled to either:
- 3.4.1 terminate the Contract, without liability to the Customer, immediately on giving notice to the Customer and shall be entitled to recover the Early Termination Payment from the Customer; or
  - 3.4.2 consider the Customer's Early Termination Notice to have been withdrawn and treat the Contract as continuing in full force and effect.
- 3.5 Until the Contract is validly terminated, Vivio shall continue to provide the Services and to invoice the Customer for all sums due in relation to the same in accordance with the Contract.

#### 4. **PROVISION AND USE OF THE SERVICES**

- 4.1 In connection with the performance of its obligations under the Contract, Vivio undertakes that it shall:
- 4.1.1 provide the Services, including provision of any Goods included in the Order and on which the Services will be used, in accordance with the Contract, including any requirements, descriptions and specifications set out in the Order Form, in all material respects;
  - 4.1.2 exercise reasonable care and skill in providing the Services and do so in compliance with good industry practices;
  - 4.1.3 use reasonable endeavours to provide the Services and deliver the Deliverables to the Customer in accordance with any delivery dates and/or timetables specified in the Contract (and if not delivery dates and/or timetables are specified, within a reasonable time), provided that time shall not be of the essence for such performance; and
  - 4.1.4 comply with all applicable laws and regulations relevant to the provision of the Services and/or Goods.
- 4.2 Customer acknowledges and agrees that:
- 4.2.1 all samples, drawings, descriptive matter, specifications and advertising issued by Vivio, including any descriptions or illustrations referenced on Vivio's website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described and shall not form part of the Contract;
  - 4.2.2 the delivery and implementation of certain Services have long lead times (for example, the lead time for installation of fibre broadband can be in excess of 9 months from formation of the Contract) and Vivio shall use reasonable endeavours to keep the Customer informed of the progress of such matters but cannot accept responsibility for any delays where delivery and/or implementation is subject to a lead time;
  - 4.2.3 it is a Business Customer using the Services internally for the benefit of its own business and that it is not entitled to resell any of the Services to any third party;
  - 4.2.4 it shall use the Services in accordance with any written manuals and instructions provided and otherwise in accordance with any reasonable instructions provided by Vivio and/or an applicable Third Party Supplier;
  - 4.2.5 it shall provide all reasonable information in relation to its access to and use of the Services which is reasonably requested by Vivio and/or an applicable Third Party Supplier;
  - 4.2.6 use of certain Services may be subject to the Customer obtaining and maintaining suitable compatible equipment which meet minimum requirements, as made known by or on behalf of Vivio or a Third Party Supplier; and
  - 4.2.7 Vivio may deliver the Services in instalments.

- 4.3 Vivio may:
- 4.3.1 change the technical specification of the Services or the manner in which they are provided or performed, in order to comply with the requirements of an applicable Third Party Supplier or any applicable law (including any health and safety regulations or requirements or OFCOM guidelines);
  - 4.3.2 change the technical specification of the Services and/or the manner in which they are provided or performed for operational reasons, provided that any such changes do not have a materially adverse effect on the performance or provision of the Services; and/or
  - 4.3.3 suspend the Services in whole or part for an emergency, operational reasons (such as maintenance, service upgrades or network unavailability), regulatory or legal reasons or because of matters outside of its control (including any matters within the control and/or ambit of the Third Party Supplier),
- and Vivio shall give the Customer as much notice as is reasonably possible of any of the same.
- 4.4 Where no other service level agreement applies to a Service (as specified in an Order Form or Product Schedule), Vivio's shall provide standard support to the Customer in connection with the access to and use of the Services, between 08:30-17:00 Monday to Friday excluding bank/public holidays in England ("**Support Hours**"). On becoming aware of an interruption to the proper functioning of the Services or any other failure to comply in any material respect with its or their specification ("**Service Interruption**"), the Customer should call the customer services telephone number specified on Vivio's website and obtain a fault log number. The time at which the Customer obtains the fault log number shall be the "**Service Interruption Notification Point**".
- 4.5 Where there is a service level agreement ("**SLA**") contained or attached to the Order Form or relevant Product Schedule, the Customer may be entitled to apply for service credits in accordance with such SLA. Unless otherwise specified in the SLA, service credits are only available for Service Interruptions occurring during Support Hours, i.e. no more than 8.5 hours' worth of service credits are available for any single day. No service credits shall be issued if the Customer has not been provided with an SLA including service credits or where a Service Interruption is attributable to any of the events specified as being excluded in the SLA, Scheduled Maintenance, emergency maintenance or factors beyond Vivio's or the Third Party Supplier's reasonable control, including but not limited to, malicious attacks to any Vivio or third party infrastructure associated with the provision or use of the Services, downtime caused by third parties including (without limitation) internet service providers and/or installation by the Customer of any third party software onto any of Vivio Equipment.
- 4.6 Service credits are not available if the Customer or any of its employees, agents or contractors are in breach of any of its obligations under any Contract as at the Service Interruption Notification Point or the cause of the Service Interruption is attributable to a wrongful or negligent act or omission of the Customer, its employees, agents or contractors.
- 4.7 Service credits shall only be issued as a credit against future charges incurred after the relevant Service Interruption began and only in relation to the same Contract. Service credits shall not be converted into a cash refund, or offset against charges due under other Contracts. If Vivio gives notice to terminate a Contract, it will deduct any service credits relating to that Contract from the final invoice in relation to that Contract.
- 4.8 Unless otherwise specified in the applicable SLA, a claim for service credits may only be made within 5 working days after the Service Interruption relating to the claim began. A claim should be made in accordance with the SLA or otherwise in writing to Vivio.
- 4.9 In the absence of an SLA, Vivio's standard support commitment shall be to exercise reasonable endeavours to respond to notifications of Service Interruptions and associated communications received by telephone or email within 4 Support Hours and to use reasonable endeavours to rectify the same within a reasonable period of time. In this event, Vivio does not guarantee that a Service Interruption shall be fully resolved in a particular timeframe.
- 4.10 Vivio does not accept any responsibility for any data or information stored on the Customer's systems, equipment, or on Vivio Equipment in the Customer's possession or control. In particular but without limiting the foregoing, Vivio shall not be liable for the loss or corruption

of any such data or information caused by the carrying out of investigation and/or maintenance of the Services. The Customer shall ensure that appropriate backups of all data and information are maintained. If it is necessary for Vivio to reset any software, Vivio shall not be responsible for resetting or reloading equipment programming and user profiles.

- 4.11 Unless expressly stated otherwise in writing, the Customer shall be responsible for the back-up of any data or information on its, or its licensors', software or systems and the Customer shall ensure that any third party operating and application software is created and stored so that the system and files of any Services provided by Vivio may be restored in the event of any damage, corruption or other similar loss of data howsoever occasioned.
- 4.12 The Customer agrees that, in the course of its use of the Services, it shall not (and shall procure that its users do not):
- 4.12.1 publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
  - 4.12.2 threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
  - 4.12.3 engage in illegal or unlawful activities;
  - 4.12.4 knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Customer;
  - 4.12.5 knowingly download, make available or upload files that contain a virus or corrupt data;
  - 4.12.6 falsify the true ownership of software or other material or information contained in a file that the Customer makes available via the Services;
  - 4.12.7 'spam' or otherwise deliberately abuse any part of the Services;
  - 4.12.8 breach the rights of third parties;
  - 4.12.9 obtain access, through whatever means, to restricted elements of any network or system used by Vivio or a Third Party Supplier in the provision of the Services;
  - 4.12.10 act in a manner which restricts or inhibits any other user from using or enjoying the Services.

## 5. **INSTALLATION AND IMPLEMENTATION**

- 5.1 Where Services must be delivered, installed and/or implemented prior to the Service Commencement Date, Vivio will perform such activities as soon as reasonably practicable and shall notify the Customer on completion. The Service Commencement Date shall be the date set out in such notification. In the absence of notification, the Service Commencement Date shall be the date the Customer commences use of the Services.
- 5.2 If any Services referred to in an Order Form commence on different dates, each shall have its own Service Commencement Date, and therefore its own Minimum Service Term and Renewal Term thereafter. Where Services referred to in an Order Form have different Service Commencement Dates, they will each be treated as individual and distinct Contracts for termination purposes.
- 5.3 Save for any costs payable in relation to implementation or set-up, Charges shall start to accrue for the Services from the Service Commencement Date. Where the Services replace existing Services, charges for the replaced Services shall stop accruing on the Service Commencement Date for the replacement Services.
- 5.4 Where the Customer or any of its employees, agents or contractors unreasonably delay or hinder any troubleshooting, set-up, installation or re-installation of the Services (including, without limitation, which constitutes a breach of clause 5.5), Vivio reserves the right to determine that the Service Commencement Date shall start on the date which Vivio reasonably believes the set up and/or installation of the Services (as appropriate) would have been completed, but for such delay or hindrance on the part of the Customer.
- 5.5 To enable Vivio to carry out its obligations and exercise its rights under the Contract, the Customer shall provide Vivio (and/or its employees, agents, contractors and suppliers,

including Third Party Suppliers) with such assistance, cooperation, information, facilities (including but not limited to everything necessary relating to number porting, cat5e cabling and the provision of a suitable LAN) and access to its premises and/or other relevant locations as Vivio or the applicable Third Party Supplier shall reasonably require, subject to reasonable advance notice. Any period of delay in providing Vivio (and/or its employees, agents, contractors and suppliers) with such assistance, cooperation, information, facilities and/or access shall be excluded from any performance deadlines and/or service credit calculations. The Customer shall take all reasonable health and safety precautions to protect Vivio's staff, employees, agents, contractors and suppliers when attending at the Customer's offices or other relevant locations controlled by the Customer.

- 5.6 The Customer shall reimburse Vivio on demand for any charges, costs or other expenses levied on Vivio by any agent, contractor, supplier (including a Third Party Supplier) as a result of that entity not being permitted the required access to the Customer's premises or other relevant locations as previously arranged and agreed between the Customer and Vivio, subject to Vivio providing documentary evidence of such incurred charges, costs or expenses.

## 6. DELIVERY OF THE GOODS

- 6.1 Where the Services include the provision of any Goods, the Goods shall be delivered to the Delivery Point. and the charges for delivery shall be as set out in the Order Form. In the absence of the same, Vivio shall be entitled to charge the Customer for all reasonable delivery costs and charges associated with the delivery of the Goods to the Delivery Point.

- 6.2 The Customer shall take delivery of the Goods from the Delivery Point immediately upon delivery and shall arrange for unloading of the same. Risk in the Goods passes to the Customer upon delivery of the Goods to the Delivery Point.

- 6.3 If for any reason the Customer fails to accept delivery of any of the Goods when they are delivered to the Delivery Point, or Vivio is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, access, licences or authorisations, the Goods shall be deemed to have been delivered; risk in the Goods shall pass to the Customer; and Vivio may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) incurred by Vivio.

- 6.4 In the event of non-delivery, or the delivery of incorrect and/or damaged Goods, the Customer agrees to give written notice to Vivio and provide evidence of the same to the reasonable satisfaction of Vivio within 7 days of the date when delivery took place or would in the ordinary course of events have taken place.

## 7. TITLE IN THE GOODS

- 7.1 Goods are provided as an ancillary part of the Services only and for use for the duration of the relevant Services only. If the relevant Services cease, the Goods must be returned to Vivio in accordance with clause 7.3. Ownership of the Goods shall only pass to the Customer if the Order Form expressly states that title passes to the Customer and then only if Vivio has received in full (in cash or cleared funds) all sums due to it in respect of the purchase of such Goods.

- 7.2 In respect of any Goods being provided for use in connection with the relevant Services, or until ownership of the Goods has passed to the Customer, the Customer shall:

- 7.2.1 ensure that the Goods remain readily identifiable as Vivio's property;
- 7.2.2 not destroy, deface or obscure any identifying mark or packaging on or relating to such Goods;
- 7.2.3 maintain such Goods in satisfactory condition and keep them insured on Vivio's behalf for their full price against all risks. On request the Customer shall produce the policy of insurance to Vivio;
- 7.2.4 not remove, alter or copy any software installed on any of the Goods; and
- 7.2.5 not sell, transfer or otherwise dispose of any of the Goods.

- 7.3 In respect of Goods being provided for use in connection with the relevant Services, or until title to the Goods passes, the Customer will, upon Vivio's request, deliver up the Goods in the

Customer's possession and if the Customer fails to do so forthwith, Vivio may enter the Delivery Point owned, occupied and/or controlled by the Customer and repossess and remove the Goods.

## 8. **WARRANTIES**

8.1 Subject to clauses 4, 8.2, 9.3 and 13, the Customer acknowledges and agrees that all Goods supplied by Vivio are manufactured by third parties. Accordingly, Vivio shall have no liability or obligation to the Customer or any third party in relation to the quality or functionality of the Goods. In the event that the Customer discovers a defect in the Goods upon or following delivery, the Customer may be entitled to rely on the original equipment manufacturer's warranty for such Goods ("**OEM Warranty**"). Vivio shall, during the course of the Contract, provide reasonable support and assistance to the Customer in enforcing any such OEM Warranty but otherwise the Customer shall be responsible for contacting the manufacturer and pursuing such warranty claim.

8.2 Vivio warrants that:

8.2.1 the quantity of Goods delivered to the Customer will comply with the quantity specified in the Order Form;

8.2.2 the description and/or specification of the Goods delivered will comply in all material respects with that set out or referred to in the Order Form;

8.2.3 the Services will comply in all material respects with any description set out or referred to in the Order Form for the term of the Contract relating to such Services, including any SLA;

8.2.4 it will obtain and maintain such licences, permissions and/or consents as are necessary to enable it to provide and perform the Services in accordance with the Contract; and

8.2.5 it will effect and maintain adequate security measures to safeguard its ability to provide the Services.

8.3 The Customer warrants that:

8.3.1 it will receive and use the Services (including any Deliverables and Goods) only in accordance with the terms of the Contract and, where relevant, any Acceptable Use Policy;

8.3.2 it will not copy, adapt, de-compile, reverse engineer, disassemble or modify any of the Goods, Deliverables, Pre-Existing Materials and/or Services (including without limitation any software, manuals or documentation comprising or relating to the same) save to the extent expressly permitted in the Contract or by applicable laws or with the prior written consent of Vivio;

8.3.3 its use of the Services (including any Deliverables and Goods) shall comply with all applicable laws and regulations, including without limitation laws regarding the processing and transmission of data (including Personal Data);

8.3.4 it has the right to enable Vivio and its employees, agents and subcontractors to use any data (including Personal Data) transferred to or generated by Vivio in the course of performing the Contract for the purpose of providing the Services and in the manner envisaged by Vivio's privacy policy (as updated from time to time), located at [www.vivio.co.uk/privacy-policy/](http://www.vivio.co.uk/privacy-policy/) and incorporated herein by this reference;

8.3.5 it will obtain and maintain such licences, permissions and/or consents as are necessary to enable it to receive and use the Services (including any Deliverables and Goods) in accordance with the Contract; and

8.3.6 it will effect and maintain adequate security measures to safeguard the Services (including the Deliverables and Goods) and shall comply with all of Vivio's reasonable advice with regard to the use of the Services, including, without limitation, the implementation of upgrades to the IT infrastructure, specified operating system and computer hardware.



- 8.4 Vivio shall not be obliged to assist the Customer with any claim under any OEM Warranty, or be liable in respect of any claim made by the Customer in relation to the Services (including the Deliverables and Goods) under clauses 4, 8.2 or otherwise, if:
- 8.4.1 the defect or non-conformance arises because the Customer failed to follow the instruction manuals and documentation (if any), the manufacturer's, Vivio's or a Third Party Supplier's oral or written instructions as to the storage, installation, commissioning, use and/or maintenance of the Services or (if there are none) good trade practice;
  - 8.4.2 the defect arises as a result of Vivio or a Third Party Supplier following any instructions supplied by the Customer in connection with the set-up, implementation, installation and/or provision of the Services;
  - 8.4.3 the Customer modifies, repairs, or replaces Services (including the Deliverables and Goods) or any part thereof (or attempts to do the same) without the prior written consent of Vivio;
  - 8.4.4 the Customer is in breach of clause 8.3;
  - 8.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 8.4.6 the Services differ from their description as a result of changes made in accordance with clause 4.3.

## 9. **TERMINATION AND SUSPENSION**

- 9.1 Without prejudice to any other rights or remedies which it may have, Vivio may suspend the provision of the Services and either party may terminate the Contract without liability to the other immediately on giving written notice to the other if:
- 9.1.1 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of it being notified in writing of the breach;
  - 9.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or is deemed unable to do so within the meaning of section 123 of the Insolvency Act 1986, makes any voluntary arrangement with its creditors or becomes subject to an administration order or serves notice of administration, or has a receiver, manager or administrative receiver appointed over its assets or a petition is filed, notice is given, resolution is passed or order is made for its winding up, or it shall go into any form of liquidation (except for the purposes of a solvent amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on the predecessor company under this Agreement);
  - 9.1.3 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.2; or
  - 9.1.4 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 9.2 Without prejudice to any other rights or remedies which it may have, Vivio may also suspend the provision of the Services or terminate any Contract without liability to the Customer immediately on giving it written notice if:
- 9.2.1 the Customer fails to pay any undisputed Charges or other sums due under the Contract in accordance with its terms and remains in default following the provision by Vivio of 7 days' notice to the Customer that such payment is overdue;
  - 9.2.2 there is a change of control of the Customer (as defined in section 1124 of the Corporation Tax Act 2010), except where approved by Vivio in advance;
  - 9.2.3 the Customer encumbers or in any way charges any of the Goods and/or Deliverables in respect of which title has not passed to the Customer; or

- 9.2.4 Vivio reasonably suspects that the Customer is using the Services in breach of any terms of the Contract and/or in contravention of any applicable laws, rules, regulations, codes of conduct or codes of practice and/or that the Customer has provided false or misleading information.
- 9.3 Vivio may terminate the Contract in whole or part if any Third Party Supplier withdraws any of the Services (including any Goods) provided under the Contract and Vivio cannot find an alternative supplier of the relevant Services or other workaround prior to the date of withdrawal by the relevant Third Party Supplier.
- 9.4 On termination of the Contract for any reason:
- 9.4.1 the Customer shall immediately pay to Vivio an amount equal to any outstanding unpaid invoices for Charges and other sums due and any interest due on the same and, in respect of Services supplied but for which no invoice has been submitted, Vivio may submit an invoice, which shall be payable immediately on receipt;
- 9.4.2 the Customer shall, unless otherwise agreed, immediately return all Goods and Deliverables (save to the extent title has passed to the Customer pursuant to the Contract) and all of Vivio Equipment, Pre-existing Materials and confidential information (including all copies of the same in whatever media). If the Customer fails to do so, then Vivio may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping and shall have no right to use the same (save to the extent agreed otherwise);
- 9.4.3 Vivio shall, save where the Customer is required to pay an Early Termination Payment in accordance with clause 3.2, repay any Charges paid in advance for Services not yet provided;
- 9.4.4 to the extent that Vivio provides assistance in relation to the migration of the Services to another service provider, the Customer shall reimburse all reasonable costs incurred by Vivio and pay Vivio reasonable compensation in relation to the same; and
- 9.4.5 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 9.5 On expiry or termination of the Contract, unless otherwise agreed, Vivio shall cease the provision of all Services provided under the Contract and the Customer agrees to cease any and all access to and use of such Services.
- 9.6 If Vivio suspends the provision of the Services pursuant to this clause 9, the Customer shall reimburse all reasonable costs, expenses and other liabilities suffered or incurred by Vivio in relation to such suspension. If Vivio in its sole discretion agrees to recommence the provision of the Services at any time following a period of suspension, such recommencement shall be subject to the Customer paying all reasonable costs, expenses and other liabilities suffered or incurred by Vivio in relation to the same including (without limitation) any reconnection charges.
- 9.7 On termination of the Contract (however arising), clauses 3.2-3.4, 9, 10, 11, 12, 13, 15, 19, 20 and 21 shall survive and continue in full force and effect and Vivio's (but not the Customer's) rights contained in clause 7 shall remain in full force and effect.
10. **INTELLECTUAL PROPERTY RIGHTS**
- 10.1 As between the Customer and Vivio, all Intellectual Property Rights and all other rights in the Services (including the Deliverables and Goods), Vivio Equipment and the Pre-existing Materials shall be owned by Vivio or its licensors ("**Vivio Rights**").
- 10.2 Subject to clause 10.3 and to the Customer paying all Charges and other sums due under the Contract, Vivio licences the Vivio Rights to the Customer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services for its internal business purposes and in the manner anticipated in the Order Form. If the Contract expires or terminates, this licence shall automatically terminate.

- 10.3 The grant of the licence to use any of the Vivio Rights which are owned by a third party (including, without limitation, any Third Party Supplier) is subject to the Customer agreeing and complying with such licences or other terms of use as that third party requires, including any set out or referred to in a Product Schedule.
- 10.4 Vivio may refer to the Customer as being a customer of Vivio's and may, subject to such reasonable guidelines as the Customer may impose by giving written notice to Vivio, use the Customer's logo, trademark, and/or name in relation to the advertisement, promotion or other marketing of its products and/or services to other actual or potential customers.
- 10.5 Subject to clause 10.2, nothing in this Contract shall entitle the Customer to use, modify, transfer, sub-licence or otherwise exploit or dispose of any Vivio Rights without the prior written consent of Vivio.

## 11. **CONFIDENTIALITY AND DATA PROTECTION**

- 11.1 Each party shall keep in confidence any information relating to the other party and/or its business (including, without limitation, its products, services, employees, contractors, customers or suppliers) (whether written or oral howsoever stored) of a confidential nature (including software and where relevant manuals) obtained under or in connection with this Contract and shall not without the prior written consent (such consent not to be unreasonably withheld or delayed) of the other party disclose that information to any person other than:
- 11.1.1 its employees or professional advisers;
  - 11.1.2 the employees of a Group company who need to know the information in order to fulfil the receiving party's obligations or to exercise its rights under the Contract.
- 11.2 Without prejudice to clause 11.1, the Customer shall keep in strict confidence any information (whether written or oral and howsoever stored) relating to the Pre-Existing Materials, Vivio Equipment, Vivio Rights, Services. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of exercising its rights or performing its obligations under the Contract, and shall ensure that such employees, agents and/or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 11.3 This clause 11 shall not apply to:
- 11.3.1 any information which is in the public domain other than through a breach of the Contract;
  - 11.3.2 information lawfully in the possession of the recipient before the disclosure under the Contract took place;
  - 11.3.3 information obtained from a third party who is free to disclose it; and/or
  - 11.3.4 information which a party is required to disclose by any legal or regulatory body to which it is subject and for the avoidance of doubt, this shall include any information which Vivio is required to disclose in relation to the Customer's use of the Services.
- 11.4 To the extent that Vivio acts as a Data Processor in the course of providing the Services, the parties shall comply with their respective obligations set out in the Data Protection Schedule attached to these Terms.
- 11.5 Customer acknowledges and agrees that Vivio may use and disclose to relevant third parties information regarding the Customer, end users of any of the Services and the Customer's account with Vivio (including any Personal Data for the purpose of fraud prevention, debt collection, credit management, emergency services provision, if required by law or regulatory authority and/or in the event that the whole or any relevant part of Vivio's business is sold to a third party. Disclosure to third parties may include debt collection agencies, credit reference agencies, financial institutions, emergency service organisations and other suppliers of mobile related goods and services.

## 12. **PAYMENT OF CHARGES**

- 12.1 The Customer shall pay the charges due for the Services (comprising non-recurring and recurring charges) in the amounts in full without deduction or set-off and by the dates set out

in the Order Form (the “Charges”). For the avoidance of doubt, where Charges are based on usage, they shall be calculated based on data recorded or logged by Vivio or the relevant Third Party Supplier and not by reference to any data recorded or logged by the Customer. For the further avoidance of doubt, where the Services include any Goods that are being provided in connection with a particular Service for the duration of that Service only (and which are not being purchased outright by the Customer), there is no specific charge being made for such Goods.

- 12.2 Subject to clause 12.4, payment of the Charges shall be made in the manner and amounts set out or calculated in accordance with the Order Form. Where the Customer elects a payment method other than by direct debit, Vivio reserves the right to charge the Customer an administrative charge of £50 per month (except where it expressly waives such administrative charge). In the absence of direct debit and any other agreed payment terms, payment shall be made by the Customer to Vivio within 14 days of the date of Vivio’s invoice for the same.
- 12.3 All Charges are exclusive of VAT or any analogous sales tax which, if applicable, will be charged at the rates as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services and will be payable by the Customer.
- 12.4 If the Customer reasonably disputes any invoice raised by Vivio in whole or part it shall notify Vivio in writing of the same prior to the date payment is due. Customer acknowledges and agrees that, subject to it paying all undisputed elements of such invoice, clauses 12.5 and 12.7 shall not apply to such disputed elements, provided that a representative of Customer meets with a representative of Vivio and attempts to resolve the dispute in good faith. Customer acknowledges and agrees that it shall have no right to dispute any invoiced amounts unless it notifies Vivio in writing of the same prior to the date payment is due.
- 12.5 Without prejudice to any other actions available to Vivio, Vivio may suspend the performance of the Services (including delivery of Goods) in the event that any undisputed Charges are overdue until all such undisputed Charges are paid in full in cash or cleared funds.
- 12.6 Without prejudice to clause 14, Vivio shall have the right to increase the Charges, with effect from each anniversary of the Service Commencement Date (“SCD Anniversary”), by an amount no more than that which is equal to 3% above the increase in the retail prices index over the period from the date of the last increase (or the first Service Commencement Date, as applicable) to the date ending immediately prior to the date the increase is to take effect.
- 12.7 If the Customer fails to pay Vivio any sum due pursuant to the Contract by the due date, the Customer shall be liable to pay interest to Vivio on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 12.8 The Customer is fully responsible for the access and use of the Services and accordingly will be responsible for all Charges incurred in respect of any Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the same. Vivio is not obliged to detect unauthorised or fraudulent use of the Services.
13. **LIMITATION OF LIABILITY – THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 13.1 This clause 13 sets out Vivio’s entire liability (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer under or in connection with the Contract, including in respect of:
- 13.1.1 any breach of the Contract;
  - 13.1.2 any use made by the Customer or any of its employees, agents and/or subcontractors of the Goods, Services, Vivio Equipment, the Pre-existing Materials, Vivio Rights and/or the Deliverables or any part of them; and
  - 13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 13.2 Save where expressly set out in the Contract, all warranties, conditions, representations and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

- 13.3 Nothing in these Terms limits or excludes the liability of Vivio:
- 13.3.1 for death or personal injury resulting from its negligence; or
  - 13.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Vivio; or
  - 13.3.3 for any other liability which cannot be excluded or limited by law.
- 13.4 Subject to clauses 13.3, 13.5 and 18, Vivio's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, contemplated performance or lack of performance, of the Contract shall be limited as follows:
- 13.4.1 if Vivio fails to deliver the Goods in whole or part or such Goods do not comply in all material respects with the description set out or referred to in the Order Form upon delivery, Vivio shall (at Vivio's option) either deliver those Goods not previously delivered, deliver replacement Goods or if it is unable to do so within a reasonable period, it shall refund the Customer a proportion of any sums actually paid by the Customer for the Services that cannot be performed or if relevant, the sums paid for the purchase of such Goods, provided that the Customer notifies Vivio in writing of such failure within 7 business days of the date of delivery (or the date delivery should have taken place);
  - 13.4.2 if the Services do not comply in all material respects with the description(s) and/or specification(s) set out in the Order Form, Vivio shall use reasonable endeavours to rectify the same in accordance with Clause 4;
  - 13.4.3 without prejudice to the foregoing, to the extent that Vivio has any liability to the Customer under or pursuant to the Contract, such liability shall not exceed, in connection with each claim or series of connected claims, an amount equal to the Charges paid by the Customer in the six month period prior to the liability arising (grossed up where the Contract has been in existence for less than six months).
- 13.5 Subject to clause 13.3, Vivio shall not be liable for:
- 13.5.1 loss of profits, loss of business, loss of data, loss of reputation, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information (in each case whether direct or indirect) and/or any special, indirect, consequential or pure economic loss, whether the same are direct, indirect or consequential and whether reasonably foreseeable or otherwise; and/or
  - 13.5.2 any loss, damages, costs, expenses or other liability suffered or incurred in relation to any failure by Vivio to perform its obligations to the extent caused by any act, default or negligence of the Customer or any of its officers, employees, agents or subcontractors including (without limitation), any use of the Services by Customer or anyone authorised by it with equipment which has not been approved by Vivio.
- 13.6 The Customer undertakes to indemnify and hold harmless Vivio from and against any actions, demands, proceedings, claims, costs (including without limitation legal costs), expenses, damages and other losses incurred or suffered by Vivio in respect of any Third Party Supplier claim, demand, penalty or liability, to the extent the same is caused by any breach or threatened breach of the Contract and/or any applicable licence terms by the Customer or its employees, agents or contractors.
- 13.7 Each provision set out at clauses 13.1 to 13.6 (inclusive) is to be construed as a separate provision so that if for any reason one or other of the provisions is held invalid, unreasonable or unenforceable in any circumstances, the other provision shall continue in force and effect.
14. **VARIATION**
- 14.1 Without prejudice to clauses 4.3 and 12.6, Vivio may vary:
- 14.1.1 these Terms from time to time by uploading the revised version at [www.vivio.co.uk/terms/](http://www.vivio.co.uk/terms/) and Vivio will notify the Customer of such changes, which shall take effect immediately upon receipt of Vivio's notice;

- 14.1.2 the terms of each Product Schedule from time to time by uploading the revised version at [www.vivio.co.uk/terms/](http://www.vivio.co.uk/terms/) and Vivio will notify the Customer of such changes, which shall take effect immediately upon receipt of Vivio's notice; and/or
- 14.1.3 any details set out in an Order Form, including any Charges, by providing the Customer with written notice of any such changes which shall take effect 30 days following the date of the notice. Vivio may issue notice of such variations by email or other reasonable means.
- 14.2 The Customer may dispute any material change to the Contract made under clause 14 (including any changes to the Charges but not, for the avoidance of doubt, those changes to the Charges made pursuant to clause 12.6) by providing Vivio with written notice within 30 days of the Customer's receipt of Vivio's notice of the change setting out the reason for its dispute. The parties will then enter into negotiations in good faith in order to resolve the dispute. If reasonable efforts have been made to reach an agreement but the parties have failed to resolve the dispute within 30 days of the date of Customer's notice of the dispute, the Customer may terminate the Contract by providing not less than 1 month's written notice to Vivio and during such period the terms of the Contract which existed prior to such variations being made shall take effect. Any such notice from the Customer to terminate shall be null and void in the event that Vivio withdraws the disputed change within 30 days of receipt of such notice from the Customer.
15. **GENERAL**
- 15.1 Each right or remedy of a party under this Contract is without prejudice to any other right or remedy such party may have.
- 15.2 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and use reasonable endeavours to agree an amendment to such provision such that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the parties' original commercial intention. If they are unable to do so, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 15.3 A waiver of any right or remedy under the Contract shall only be valid if made in writing. Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver of any breach of, or any default under, any provision of the Contract by the other party shall not be deemed as a waiver of any subsequent breach or default and shall in no way effect the other terms of the Contract.
- 15.4 Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
16. **RESTRICTION ON ASSIGNMENT**
- 16.1 The Customer shall not be entitled to assign or transfer any of its rights or obligations under the Contract without the prior written consent of Vivio. Vivio may at any time assign, transfer, subcontract, delegate or deal in any manner with any or all of its rights and obligations under the Contract.
17. **NOTICES**
- 17.1 Any notice to be served on either party shall be in writing and delivered by hand or sent by prepaid post (or, by email from Vivio to the Customer where the Customer has chosen to receive invoices (including any reminders and related correspondence) by email) to the addressee at the following address:
- To Vivio: by post to Vivio Limited, The Vault, 8 Boughton, Chester, CH3 5AG or any other postal address that Vivio notifies to the Customer from time to time.
- To the Customer: to the Customer's postal or email address shown on the Order Form (or any postal or email address the Customer notifies to Vivio in writing as an address to which invoices should be sent).

17.2 A notice or other communication required to be given by the Customer under or in connection with the Contract shall not, save as set out above, be validly served if sent by email.

18. **FORCE MAJEURE**

Neither party shall be liable to the other under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract (other than payment obligations) 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 Vivio or any other party), failure of a utility service or transport network, act of God, war, riot, terrorism, 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 subcontractors (including in particular any Third Party Supplier).

19. **GOVERNING LAW AND JURISDICTION**

19.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with English Law.

19.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract.

20. **NON-SOLICITATION**

The Customer agrees that during the term of the Contract and for a period of 12 months following expiry or termination of it (however arising) that it shall not directly or indirectly canvass, or seek to solicit any person who is or has been engaged as an employee, worker or agent of Vivio without paying to Vivio 30% of the relevant person's annual gross salary or annual gross sum paid by Vivio to that person and such Customer acknowledges and agrees that such amount constitutes a genuine pre-estimate of the loss that Vivio would suffer as a result.

21. **DISPUTE RESOLUTION**

21.1 If any dispute arises in connection with the Contract that cannot be dealt with via discussion with Vivio's customer services department, the parties will attempt to settle it by:

21.1.1 firstly, a senior manager of the Customer and Vivio exchanging full details of the dispute and then meeting to seek to resolve the dispute;

21.1.2 if 21.1.1 does not successfully resolve the dispute, secondly, a Director/CEO of the Customer and Vivio exchanging any further details relating to the dispute and then meeting to seek to resolve the dispute; and

21.1.3 if 21.1.1 or 21.1.2 does not successfully resolve the dispute, thirdly, if Vivio so elects, the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR within 7 days of a party requesting a mediator be appointed and the mediation shall take place in London within 7 days of the mediator's appointment.

## DATA PROCESSING SCHEDULE

### 1. DEFINITIONS AND INTERPRETATIONS

In this Data Processing Schedule, the following definitions shall apply:

**“Controller”** means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data.

**“Customer Data”** means any Personal Data provided to or accessed by Vivio by or on behalf of the Customer for processing in accordance with the terms of the Contract.

**“Data Protection Legislation”** means all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction, including, as applicable, the GDPR (as implemented in the UK pursuant to the European Union (Withdrawal) Act 2018), the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, and the Privacy and Electronic Communication Regulations 2003, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in the United Kingdom.

**“Data Subject”** means an identifiable natural person about whom a Controller holds Personal Data. For the purposes of the Contract, this may include an individual whose details are provided to Vivio by the Customer as part of the Customer Data.

**“GDPR”** means General Data Protection Regulation (EU) 2016/679 as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time.

**“Personal Data”** shall have the meaning set out in the GDPR.

**“Processor”** means a natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the Controller.

**“Services”** means the provision of the services specified in the Contract.

**“Sub-processor”** means a natural or legal person, public authority, agency or any other body contracted by the Processor to process Personal Data for the purpose of carrying out a specific processing activity on behalf of the Controller.

**“Supervisory Authority”** means an independent public authority, which is established by a Member State pursuant to Article 51 of GDPR.

### 2. GENERAL

2.1 Both parties will comply with their respective obligations under the Data Protection Legislation and the terms of this Data Processing Schedule.

2.2 In connection with the Customer Data, the parties acknowledge that the Customer is the Controller and Vivio is the Processor.

2.3 The Customer shall ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of the Customer Data to Vivio for the duration and purposes of the Contract.

### 3. CUSTOMER OBLIGATIONS

The Customer undertakes and warrants that all instructions provided to Vivio in relation to the processing of Customer Data are lawful and shall as a minimum include: (a) the nature and purpose of the processing of the Customer Data; (b) the types of Personal Data to be processed; and (c) the categories of Data Subjects to whom the Personal Data relates. Details of the processing activities shall be as shown in the applicable Order Form(s).

### 4. PROCESSOR OBLIGATIONS

To the extent that the performance of the Services and/or Vivio's other obligations under the Contract involves Vivio processing Customer Data, Vivio acting as Processor shall:

4.1 only carry out processing of Customer Data in accordance with the Contract and/or the Customer's instructions (unless Vivio is otherwise required to process Customer Data by



European Union, Member State and/or UK law to which Vivio is subject, in which case Vivio shall inform the Customer of that legal requirement unless prohibited by that law on important grounds of public interest), and shall promptly inform the Customer if, in Vivio's opinion, any instruction given by the Customer to Vivio infringes any Data Protection Legislation;

- 4.2 assist the Customer by taking appropriate technical and organisational measures, insofar as this is possible, with fulfilling its obligations in respect of Data Subject rights under the Data Protection Legislation;
- 4.3 take all security measures required in accordance with Data Protection Legislation (including where relevant, Article 32 GDPR), and within a reasonable time from a reasonable request of the Customer provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the Personal Data against unauthorised or unlawful processing and accidental loss;
- 4.4 taking into account the nature of the processing and the information available to Vivio, assist the Customer in ensuring compliance with the Customer's obligations to: i. keep Personal Data secure (Article 32 GDPR); ii. notify Personal Data breaches to the Supervisory Authority (Article 33 GDPR); iii. advise Data Subjects when there has been a Personal Data breach (Article 34 GDPR); iv. carry out data protection impact assessments (Article 35 GDPR); and v. consult with the Supervisory Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (Article 36 GDPR);
- 4.5 without undue delay, inform the Customer of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Customer Data transmitted, stored or otherwise processed;
- 4.6 in addition to the confidentiality obligations contained within the Contract, ensure that persons authorised to process the Customer Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality; and
- 4.7 on expiry or termination of the Contract, immediately cease to use Customer Data and arrange for its safe return or destruction as required by the Customer (unless European Union, Member States and/or UK Law requires storage of any Personal Data contained within the Customer Data or an exemption under GDPR applies).

## 5. **AUDIT RIGHTS**

- 5.1 Upon the Customer's reasonable request, Vivio agrees to provide the Customer with any documentation or records which will enable the Customer to verify and monitor Vivio's compliance with its data protection and security obligations under the terms of this Data Processing Schedule, within 30 days of receipt of such request.
- 5.2 Where, in the reasonable opinion of the Customer, such documentation is not sufficient in order to meet the obligations of Article 28 of the GDPR, the Customer will be entitled to request and Vivio shall facilitate (no more than once per annum), an on-site audit of Vivio's premises and systems used in connection with the Service, to confirm compliance with its data protection and security obligations under this Data Processing Schedule.
- 5.3 Any audit carried out by the Customer will be conducted at the Customer's cost, with Vivio's supervision at all times, and in a manner that does not disrupt, delay or interfere with Vivio's performance of its business.

## 6. **USE OF SUB-PROCESSORS AND INTERNATIONAL TRANSFERS**

- 6.1 Where Vivio uses third party suppliers or subcontractors and where they are acting as a Sub-processor in relation to the Customer Data Vivio shall: (a) enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this Data Processing Schedule to the extent applicable to the nature of the services provided by such Sub-processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR; (b) shall remain liable for any act or omission of a Sub-processor that does not comply with the data protection obligations as set out in this Data Processing Schedule; and (c) Vivio shall inform the Customer of any intended changes concerning the addition or replacement of a Sub-processor with access to Customer Data and give the Customer the opportunity to object to such changes.

6.2 Vivio shall not transfer Customer Data outside of the UK or European Economic Area (EEA) (including transfers to Sub-processors based outside the UK/EEA) except as necessary for the proper performance of the Services. In the case of any transfer outside of the UK or EEA (a) Vivio shall provide and maintain appropriate safeguards as set out in Article 46 GDPR to lawfully transfer the Personal Data to a third country; (b) Vivio shall ensure that data subjects have enforceable rights and effective legal remedies; and (c) Vivio shall comply with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.