

This Agreement will continue for the Term and is entered into between us and you, together the Parties and each a Party.

## BACKGROUND

- A. You are a business who would like to analyse, and obtain insights, as to its assets.
- B. We have created sensor technology which allows you to monitor assets, and collect data from the assets, to empower businesses to make better decisions.
- C. This Agreement sets out the terms on which we will provide this technology to you.

### 1. Products and Services

- 1.1. In consideration of your payment of the Fees and subject to your compliance with this Agreement, we will provide the Product and Services in accordance with this Agreement, whether ourselves or through our Personnel.
- 1.2. If this Agreement expresses a time within which the Product and Services are to be provided, you agree that such time is an estimate only, and creates no obligation on us to provide the Product and Services by that time.

### 2. Commencement

- 2.1. Unless expressed otherwise in this Agreement, we will provide the Product and Services within a reasonable time after the later of:
  - 2.1.1. where applicable, us receiving payment of any upfront Fees; and
  - 2.1.2. to the extent relevant information is required, us receiving the relevant information and all things required by us to be able to provide the Product and Services to you (as reasonably determined by us, in our sole discretion).

## PRODUCT

### 3. Delivery, title and risk

- 3.1. We will use reasonable endeavours to deliver the Product to the Site by the Delivery Time. If applicable, you agree to pay for all Delivery Costs.
- 3.2. Risk in the Product will pass to you on delivery of the Product to the Site.
- 3.3. Subject to clause 3.4, title in the Product will remain with us until all Fees due and payable to us under this Agreement are paid in full.
- 3.4. If under the Schedule, the Product Purchase Terms for the Product are on the basis of a lease, you agree that title in the Product will at all times remain with us, and you take the Product as a bare bailee only.
- 3.5. You agree to not create an encumbrance, lien, charge or other interest on or over the Product during the Term and while title is with us.

### 4. Contractual lien and security interest

- 4.1. You agree that we hold a general lien over any Product owned by us that is in your possession, for the satisfactory performance of your obligations under this Agreement.
- 4.2. You agree that this Agreement and your obligations under this Agreement create a registrable security interest in

favour of us, and you consent to the security interest (and any other registrable interest created in connection with this Agreement) being registered on any relevant securities register (and you must do all things to enable us to do so).

- 4.3. This clause 4 will survive termination or expiry of this Agreement.

### 5. Leasing the Product

- 5.1. This clause 5 will apply if, under the Product Purchase Terms in the Schedule, we agree to lease the Product to you.
- 5.2. In consideration of your payment of the Fee, we will provide to you the Product, for the Minimum Period, and any Extended Period.
- 5.3. You agree:
  - 5.3.1. to ensure that you have any necessary permissions or consents to install and use the Product (including any strata or building management consent);
  - 5.3.2. to the fullest extent possible to not allow anyone to interfere or otherwise tamper with the functioning of the Product;
  - 5.3.3. to protect and maintain the Product and keep it in good order and condition;
  - 5.3.4. that you are responsible for any loss, cost, theft, damage, vandalism or destruction of or to the Product; and
  - 5.3.5. that no such loss, cost, theft, damage or destruction of or to the Product will impair or frustrate any of your obligations under this Agreement (including, without limitation, payment of the Fees).
- 5.4. Unless otherwise advised by us, you are not permitted to otherwise conduct any maintenance and/or otherwise tamper with the Product or permit any third party not authorised by us to do so. We have no obligation to provide any services for, and provide no warranties in respect to, the Services or Product, or any part of the Services or Product, which has been provided by or modified by a person other than us.
- 5.5. Upon expiry or termination of this Agreement or cancellation of the Services to which the Product relates, you are responsible for returning the Product to us at your cost.

### 6. Warranty against Defects

- 6.1. This clause 6 will apply if, under the Product Purchase Terms in the Schedule, you agree to purchase the Product.
- 6.2. We agree to provide you with a Warranty for the purchased Hardware, as set out in the Viotel standard warranty offering found here [www.viotel.co/warranty.html](http://www.viotel.co/warranty.html)

### 7. Maintenance, servicing and repairs

- 7.1. If you experience any issues using the Product during the Term, you should contact us using our details in the Schedule.
- 7.2. If no Warranty applies, or the Product Warranty Period has expired, any services we provide to resolve issues with the Product, including any servicing and repairs, are out of scope and must be requested as an Additional Service in accordance with clause 16.
- 7.3. Exclusivity of support: You agree that during the Term, to the extent any servicing and repairs are required in relation to the Product, you must ensure that this work is done by us and our Personnel, unless otherwise instructed or permitted

by us. You agree that failure to do so may mean the Warranty will not apply.

- 7.4. **Maintenance:** During the Term, in addition to and without limiting any other obligation under this Agreement, you agree to:
- 7.4.1. operate and maintain the Product in accordance with our reasonable instructions and any manual provided by us to you; and
  - 7.4.2. protect and keep the Product in the same condition (including being in good working order), subject to any fair wear or tear.
- 7.5. **Servicing:** Outside of experiencing any issues, we recommend that you get the Product serviced by us in accordance with the Specifications, depending on the level and type of use. Please ask us for clarification if you are unsure.
- 7.6. Failure to have the Product regularly serviced may mean the Warranty will not apply.
- 7.7. **Repairs:** To the extent permitted by law and subject always to your Statutory Rights, you agree that you are responsible for the costs associated with any repair or replacement to, or of, any Product (or part of any Product), including return delivery costs, where this is required and is not as a result of our default of this Agreement, including if it is not otherwise covered by a Warranty.

## SOFTWARE

### 8. Software Licence

- 8.1. Subject to your compliance with the terms of this Agreement and payment of the Fees, we grant you (and any Authorised Users) a non-exclusive, non-transferable (except with our written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to access and use the Subscription Services for the Term (Licence).

### 9. Restrictions on Use

- 9.1. You must not (and must ensure that any Authorised Users do not) access or use the Subscription Services except as permitted by the Licence and you must not and must ensure that any other person (including an Authorised User) does not:
- 9.1.1. use the Subscription Services in any way that breaches of any applicable Laws or infringes any person's rights, including Intellectual Property Rights (and privacy rights);
  - 9.1.2. use the Subscription Services in any way that damages, interferes with or interrupts the supply of the Subscription Services;
  - 9.1.3. introduce malicious programs into our hardware and software or Systems, including viruses or malware through any channel;
  - 9.1.4. use the Subscription Services to carry out security breaches or disruptions of a network. This includes accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);

- 9.1.5. use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Subscription Services;
- 9.1.6. use the Subscription Services to circumvent user authentication or security of any of our networks, accounts or hosts or those of members or suppliers; and
- 9.1.7. if applicable, send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages, or use the Services in breach of any person's privacy (such as by way of identity theft or "phishing").

### 10. Access and availability

- 10.1. We agree to use commercially reasonable endeavours to ensure the Subscription Services are available and accessible during the Term.
- 10.2. During the Term, from time to time, we may perform scheduled and emergency maintenance and updates in relation to the Subscription Services. You agree that access to, or the functionality of all or part of the Subscription Services, may need to be suspended for a time in order for us to do this.
- 10.3. We will endeavour to provide you with reasonable notice, where possible, of any interruptions to access and availability of the Subscription Services.

### 11. Viruses and Defects

- 11.1. We agree to use reasonable commercial efforts to supply the Services free from defects and viruses. We further agree to, where this is commercially feasible, use reasonable commercial endeavours to remediate any such issues within a reasonable time and as we become aware of them. If you become aware of any issues during the Term, please notify us.
- 11.2. The remediation in clause [11.1](#) will not apply to Third Party Inputs (for example, issues in relation to your System).

### 12. Updates, fixes and variations to the Subscription Service

- 12.1. You agree that we may make changes to the Subscription Services as part of an update, provided those changes do not substantially and adversely affect your use and enjoyment of the Subscription Services. Where we notify you of an update, you are required to follow our directions and do all things reasonable to facilitate such updates within a reasonable time, and where you use the Subscription Services on premise, you agree to do all things reasonably required to ensure the updates and fixes are promptly and properly installed.

### 13. Third Party Inputs

- 13.1. You agree that:
  - 13.1.1. the Product and Services may include Third Party Inputs that interface, or interoperate with, the Product and Services; and
  - 13.1.2. the provision of the Product and Services may be contingent upon, or impacted by, such Third Party Inputs (for example, our Software may use or rely on third party technology).

- 13.2. To the extent that any Third Party Inputs are required by us in order to be able to provide the Product and Services to you:
  - 13.2.1. we agree to obtain and maintain the required licences for access and use of any Third Party Inputs (at no additional cost to you); and
  - 13.2.2. you agree to:
    - 13.2.2.1. where these are set out in an attachment to this Agreement, adhere to the terms and conditions of any such Third Party Input licences; and
    - 13.2.2.2. comply with our reasonable instructions and directions.
- 13.3. You acknowledge and agree that the benefit of the Third Party Input's interface, or interoperation with, the Product and Services, is subject to your compliance with clauses [13.2](#).
- 13.4. To the extent that you choose to use such functionality and they are not a part of the Product and Services, you are responsible for related to the applicable third-party software and services:
  - 13.4.1. the purchase of;
  - 13.4.2. the requirements; and
  - 13.4.3. the licensing obligations,
- 13.5. It is your responsibility to ensure these requirements are met in order for you to benefit from the specific functionality made available to you.
- 15.14. that you have reviewed and understand the terms of this Agreement (including our Privacy Policy), and will use the Product and Services in accordance with them; and
- 15.15. that in entering into this Agreement, you have not relied upon any representation, warranty or inducement by us nor is any representation, warranty or thing made or done by us to be inferred, incorporated or implied into this Agreement.
- 15.2. You represent, warrant and agree that:
  - 15.2.1. you have the legal capacity to enter into a legally binding agreement;
  - 15.2.2. there are no legal restrictions preventing you from entering into this Agreement;
  - 15.2.3. all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
  - 15.2.4. you have not relied on any representations or warranties made by us in relation to the Product and Services (including as to whether the Product and Services are or will be fit or suitable for your particular purposes), unless as expressly stipulated in this Agreement;
  - 15.2.5. you will only use the Product and Services in accordance with our reasonable instructions and directions (including any policies that we provide to you from time to time);
  - 15.2.6. you will not use the Product and Services in breach of any Laws or in breach of the Manual;
  - 15.2.7. you are responsible for all users using the Product and Services, including your Personnel (and any Authorised Users), and you must ensure that no person uses any part of the Product and Services in a way that is in breach of the Manual, any Laws or to infringe any person's rights (including Intellectual Property Rights and privacy rights);
  - 15.2.8. the technical processing and transmission of information and data, including Customer Data, may be transferred unencrypted and involves:
    - 15.2.8.1. transmissions over various networks; and
    - 15.2.8.2. changes to conform and adapt to technical requirements of connecting networks or devices;
  - 15.2.9. we may use third party service providers to integrate with the Services. If the providers of third-party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without Liability or entitling you to any refund, credit, or other compensation;
  - 15.2.10. the Product and Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third-party products, facilities or services;
  - 15.2.11. we do not guarantee that any file or program available for download and/or execution from or via the Product and Services is free from viruses or other conditions which could damage or interfere with data, hardware or software with which it might be used;
  - 15.2.12. we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, (your Authorised Users) or your Personnel;

## GENERAL TERMS

### 14. Our Obligations

- 14.1. We represent, warrant and agree that:
  - 14.1.1. we are properly constituted and have the right and authority to enter into this Agreement;
  - 14.1.2. we will provide the Product and Services in accordance with all applicable Laws; and
  - 14.1.3. we will use reasonable efforts to ensure all of our obligations under this Agreement will be carried out:
    - 14.1.3.1. by suitably competent and trained Personnel; and
    - 14.1.3.2. in an efficient and professional manner.
- 14.2. We further agree that:
  - 14.2.1. we have legal authority to grant you the Licence;
  - 14.2.2. all pre-existing Intellectual Property Rights in the Product and Services (with the exception of the property rights in any Third Party Inputs) will be owned or held by us;
  - 14.2.3. the provision of the Product and Services does not and will not infringe any other person's Intellectual Property Rights; and
  - 14.2.4. the Product and Services will be provided in accordance with this Agreement (including any Specifications).

### 15. Your Obligations

- 15.1. You agree:
  - 15.1.1. to comply with this Agreement, our reasonable requests or requirements, and all applicable Laws;
  - 15.1.2. to only use the Product for the Assets at the Site;
  - 15.1.3. to provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under this Agreement or at Law, in a timely manner;

- 15.2.13. the Product and Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Product and Services to third parties without our prior written consent;
- 15.2.14. any information, advice, material, work and services (including the Services) provided by us under or produced in relation to this Agreement do not constitute legal, financial, merger, due diligence or risk management advice;
- 15.2.15. you will be responsible for the use of any part of the Product and Services, and you must ensure that no person uses any part of the Product and Services to break any Law or infringe any person's rights (including Intellectual Property Rights or privacy rights);
- 15.2.16. you have all hardware, software and services which are necessary to access and use the Product and Services (other than those required to be provided by us under this Agreement);
- 15.2.17. you will make any changes to your Systems, such as system upgrades, that may be required to support the delivery and operation of any Services or Products;
- 15.2.18. you are not and have not been the subject of an Insolvency Event;
- 15.2.19. if applicable, you hold a valid ABN which has been advised to us; and
- 15.2.20. if applicable, you are registered for GST purposes.

## 16. Additional Services

- 16.1. You may request Additional Services, including:
  - 16.1.1. support and assistance on a consultancy basis;
  - 16.1.2. training; and
  - 16.1.3. maintenance, servicing and repairs services, by providing written notice (including by email) to us.
- 16.2. We may, at our discretion, provide you with written notice in the form of a scope of services, a proposal or a statement of work (as applicable) covering the Additional Services requested and any further fee required for us to undertake the Additional Services.
- 16.3. If you agree to the scope of services, proposal or statement of work (as applicable), for the Additional Services, then we will provide the Additional Services to you in consideration for payment of the additional fee, which will form part of the Fees.

## 17. Access

- 17.1. You agree to provide us (and our Personnel) with unfettered access to any premises where the Product and Services is located, and any other premises reasonably necessary for us to provide the Product and Services, free from harm or risk to health or safety at the times and on the dates requested by us.
- 17.2. This clause 17 will survive termination and expiry of this Agreement.

## 18. Payment

- 18.1. You agree to pay us:
  - 18.1.1. the Fees;
  - 18.1.2. all pre-approved Expenses; and
  - 18.1.3. any other amounts payable to us under this Agreement, in accordance with the Payment Terms.
- 18.2. If any payment is not made in accordance with the Payment Terms, the amount of that payment becomes a

debt immediately due and payable to us and we may (at our absolute discretion):

- 18.2.1. immediately cease providing the Product and Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so; and/or
- 18.2.2. charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 5% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.
- 18.3. If you rectify such non-payment within a reasonable time after suspension, then we may, at our discretion, recommence the provision of the Product and Services as soon as reasonably practicable.
- 18.4. To the maximum extent permitted by Law, the Fees are non-refundable. To the maximum extent permitted by law, there will be no refunds or credits for any unused Product and Services (or part thereof).

## 19. Variation to the Fees

- 19.1. You agree that on each anniversary of the Commencement Date, the Fees (including each of the Fee amounts) will automatically increase, according to a percentage which we reasonably view is in accordance with the fees of the same or similar Products and Services in the market, which will be no more than 5%.

## 20. Intellectual Property

- 20.1. This clause 20 will survive termination or expiry of this Agreement.
- 20.2. The Parties agree that nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights.

Our intellectual property rights:

- 20.3. You agree that we own all Intellectual Property Right in and these Intellectual Property Rights will at all times vest, or remain vested, in us (or, if applicable, our third-party service providers).
  - 20.3.1. Our Materials;
  - 20.3.2. New Materials or Improvements; and
  - 20.3.3. any Feedback,
- 20.4. To the extent that ownership of these Intellectual Property Rights does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.
- 20.5. In the use of any Intellectual Property Rights in connection with this Agreement, you agree that you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach.
- 20.6. You also agree that:
  - 20.6.1. we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any Feedback;
  - 20.6.2. you must not whether directly or indirectly, without our prior written consent:
    - 20.6.2.1. copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile the Subscription Services (or any part of the Product and Services) or otherwise attempt to

discover any part of the source code of the Subscription Services;

- 20.6.2.2. use any unauthorised, modified version of the Product and Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the Subscription Services;
- 20.6.2.3. use the Product and Services in a manner that is contrary to any Laws or in violation of any Intellectual Property Rights or privacy rights;
- 20.6.2.4. publish, post, upload or otherwise transmit data that contains any viruses, trojan horses, worms, time bombs, malware, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with information or property of any person;
- 20.6.2.5. use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Product and Services;
- 20.6.2.6. unless authorised under this agreement, use the Product and Services in a web-enabled form for the purposes of third-party analysis or view via the internet or other external network access method;
- 20.6.2.7. rent the use of the Product and Services to any third parties;
- 20.6.2.8. take any action that may compromise or jeopardise our Intellectual Property Rights in the Product and Services or otherwise;
- 20.6.2.9. remove or deface any confidentiality, copyright or other proprietary notice placed on the Product and Services;
- 20.6.2.10. make any representations or warranties to any third parties that could be construed as being representations or warranties from us in relation to the Product and Services or any other matter;
- 20.6.2.11. use the Product and Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing; or
- 20.6.2.12. do any other thing in relation to the Product and Services which is specifically prohibited by us, whether by verbal instruction or direction, or in writing.

## Your Materials

- 20.7. We agree that you own all Intellectual Property Rights in Your Materials.
- 20.8. You grant us a non-exclusive, revocable, worldwide, no sublicensable and non-transferable right and licence, for the duration of the Term, to use the Intellectual Property Rights in Your Materials solely for the purposes for which they were developed and for the performance of our obligations under this Agreement, as contemplated by this Agreement.
- 20.9. If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and agree to ensure that your

Personnel) consent to our use or infringement of those Moral Rights.

## Customer Data

- 20.10. As between you and us:
  - 20.10.1. all Customer Data is and remains your property; and
  - 20.10.2. you retain any and all rights, title and interest in and to the Customer Data, including all copies, modifications, extensions and derivative works.
- 20.11. To the extent that we receive any Customer Data under or in connection with this Agreement, you grant us a limited licence to copy, transmit, store and back-up or otherwise access the Customer Data during the Term (and for a reasonable period after the Term), to:
  - 20.11.1. supply the Product and Services to you (including to enable you and your Personnel to access and use the Product and Services);
  - 20.11.2. diagnose problems with the Product and Services;
  - 20.11.3. enhance and otherwise modify the Product and Services;
  - 20.11.4. develop other services (and for the purposes of case studies and Analytics), provided we de-identify the Customer Data, and
  - 20.11.5. as reasonably required to perform our obligations under this Agreement.
- 20.12. You must, at all times, ensure the integrity of the Customer Data and that your use of the Customer Data is compliant with all Laws.
- 20.13. You represent and warrant that:
  - 20.13.1. you have obtained all necessary rights, releases and permissions to provide all Customer Data to us and to grant the rights granted to us in this Agreement; and
  - 20.13.2. the Customer Data (and its transfer to and use by us) as authorised by you, under this Agreement does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity.
- 20.14. We assume no responsibility or Liability for the Customer Data. You are solely responsible for the Customer Data and the consequences of using, disclosing, storing or transmitting it.

## 21. Analytics

- 21.1. Despite anything to the contrary in this Agreement or elsewhere, we may monitor, analyse and compile information based on and/or related to your use of the Product and Services, in an aggregated and anonymised format (Analytics).
- 21.2. We and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.

## 22. Privacy

- 22.1. Each Party will at all times comply with the Privacy Act and any other privacy law or privacy regulation applicable to that Party (Privacy Laws).
- 22.2. In relation to Customer Data that contains or is Personal Information, we will only use this Customer Data in the manner permitted by this Agreement and Privacy Laws.

- 22.3. You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Customer Data.
- 22.4. Without limiting this clause 22, you may only disclose Personal Information in your control to us, if:
  - 22.4.1. you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
  - 22.4.2. you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties; and
  - 22.4.3. where any Personal Information is Sensitive Information, you have obtained the specific consent to that disclosure from the individual to whom the Sensitive Information relates.
- 22.5. This clause 22 will survive termination or expiry of this Agreement.

## 23. Confidential Information

- 23.1. Each Receiving Party agrees:
  - 23.1.1. not to disclose the Confidential Information of the Disclosing Party to any third party;
  - 23.1.2. to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
  - 23.1.3. to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
- 23.2. The obligations in clause 23.1 do not apply to Confidential Information that:
  - 23.2.1. is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
  - 23.2.2. is authorised to be disclosed by the Disclosing Party;
  - 23.2.3. is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
  - 23.2.4. must be disclosed by Law or by a regulatory authority, including under subpoena.
- 23.3. Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 23. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 23.
- 23.4. This clause 23 will survive termination or expiry of this Agreement.

## 24. Australian Consumer Law

- 24.1. Certain legislation, including the Australian Consumer Law (ACL) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Product and Services which cannot be excluded, restricted or modified (Statutory Rights). Nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL.
- 24.2. For major failures, you are entitled:
  - 24.2.1. to cancel your service contract with us; and
  - 24.2.2. to a refund for the unused portion, or to compensation for its reduced value.
- 24.3. You are also entitled to choose a refund or replacement for major failures with the Product. If a failure with the Product or a Service does not amount to a major failure, you are

entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Product and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Product or Service.

- 24.4. You agree that our Liability for the Product and Services is governed solely by the ACL and this Agreement.
- 24.5. Subject to your Statutory Rights and unless specified otherwise in this Agreement, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Product and Services) are provided to you without warranties, representations and guarantees of any kind, unless expressly stipulated in this Agreement.
- 24.6. Subject to your Statutory Rights, all amounts paid by you for the Product and Services are non-refundable.
- 24.7. This clause 24 will survive the termination or expiry of this Agreement.

## 25. Exclusions to Liability

- 25.1. Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
  - 25.1.1. loss of, or damage to, any property or any injury to or loss to any person;
  - 25.1.2. your or your Personnel's acts or omissions;
  - 25.1.3. the Computing Environment;
  - 25.1.4. any use or application of the Product and Services by a person or entity other than you (including any third party that you sublease, rent, sell or otherwise transfer the Product to), or other than as reasonably contemplated by this Agreement;
  - 25.1.5. any works, services, goods, materials or items which do not form part of the Product and Services (as expressed in this Agreement), or which have not been provided by us;
  - 25.1.6. any relocation, modification, configuration or reconfiguration of any Product and Services by you;
  - 25.1.7. any Third Party Inputs; or
  - 25.1.8. any event outside of our reasonable control (including a Force Majeure Event).
- 25.2. This clause 25 will survive the termination or expiry of this Agreement.

## 26. Limitations on Liability

- 26.1. Despite anything to the contrary, to the maximum extent permitted by law:
  - 26.1.1. neither Party will be liable for Consequential Loss;
  - 26.1.2. the liability of either Party for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by its acts or omissions (or those of its Personnel), and any failure to mitigate that Liability; and
  - 26.1.3. our maximum aggregate Liability arising from or in connection with this Agreement (including the Product and Services or the subject matter of this Agreement) will be limited to, and must not exceed in the aggregate, for all claims, the lesser of the value of the total Fees payable under this Agreement or \$25,000.
- 26.2. This clause 26 will survive the termination or expiry of this Agreement.

## 27. Indemnity

- 27.1. Despite anything to the contrary, to the maximum extent permitted by law, you are liable for and agree to indemnify, hold harmless, release and discharge, us in respect of any Liability which we may suffer, incur or be otherwise liable for as a result of, or in connection with:
- 27.1.1. loss of, or damage to, any property or any injury to or loss to any person (including death);
  - 27.1.2. if you lease the Product, any failure to maintain the Product in accordance with the terms of this Agreement and our directions;
  - 27.1.3. if you lease the Product, any failure or delay to return the Product in accordance with the terms of this Agreement and our directions;
  - 27.1.4. all Liabilities suffered or incurred by us in repossessing or recovering the Product;
  - 27.1.5. your or your Personnel's acts or omissions; or
  - 27.1.6. your or your Personnel's breach of this Agreement or any laws.
- 27.2. This clause 27 will survive the termination or expiry of this Agreement.

## 28. Termination

- 28.1. The Parties agree that this Agreement may only be terminated in accordance with this clause 28.
- 28.2. Where we are providing the Product and Services that include a Minimum Period:
- 28.2.1. you may not terminate our provision of the Product and Services (and this Agreement) during the Minimum Period. You will be liable to pay the Fees in full for the Minimum Period; and
  - 28.2.2. after the relevant Minimum Period, our provision of the Product and Services (and this Agreement) will automatically extend for further subsequent 1 month periods (each an Extended Period), unless:
    - 28.2.2.1. either Party provides written notice of termination at least 1 month prior to the end of the then current Extended Period; or
    - 28.2.2.2. the Agreement is otherwise terminated in accordance with its terms.
- 28.3. This Agreement will terminate immediately upon written notice by:
- 28.3.1. us, if:
    - 28.3.1.1. you (or any of your Personnel) breach any material term of this Agreement;
    - 28.3.1.2. you (or any of your Personnel) breach any provision of this Agreement and that breach has not been remedied within 20 Business Days of being notified by us;
    - 28.3.1.3. you fail to provide us with clear or timely instructions or information to enable us to provide the Product and Services;
    - 28.3.1.4. for any other reason outside our control which has the effect of compromising our ability to provide the Product and Services;
    - 28.3.1.5. you are unable to pay your debts as they fall due; or
    - 28.3.1.6. you attempt to repudiate this Agreement early (including through repudiation); and
  - 28.3.2. you, if:
    - 28.3.2.1. we are in breach of a material term of this Agreement, and that breach has not been

remedied within 20 Business Days of being notified by you; or

- 28.3.2.2. are unable to pay our debts as they fall due.
- 28.4. Upon expiry or termination of this Agreement:
- 28.4.1. we will immediately cease providing the Services, and you agree to immediately cease using the Services;
  - 28.4.2. you agree to pay for all Product and Services provided to you up to the date of termination or expiry (to the extent you have not done so already), including for Product and Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement, as a debt due and immediately payable;
  - 28.4.3. where termination has occurred pursuant to clauses 28.2 or 28.3(a)(1), (2), (3) or (6) you also agree to pay us our additional costs arising from, or in connection with, such termination;
  - 28.4.4. you agree to grant us such rights of access, in accordance with clause 16, to any premises (including the Site) where the Product is located to allow us (or our Personnel) to immediately recover or repossess the Product, if applicable;
  - 28.4.5. each Party agrees to, as soon as reasonably practicable, return to the other Party (where possible), or delete or destroy (where not possible to return), any of the other Party's property (including any Confidential Information and Intellectual Property); and
  - 28.4.6. within 1 month after termination, we may at our sole discretion anonymise or delete all Customer Data which we hold or control in relation to this Agreement, or, upon your request, we will provide you with a copy of the Customer Data in a common electronic form, at your cost.
- 28.5. We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.
- 28.6. Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 28.7. This clause 28 will survive the termination or expiry of this Agreement.

## 29. Taxes

- 29.1. Goods and services supplied to Australian residents or for use in Australia are subject to tax under the GST law.
- 29.2. If you provide assurances to us that we may rely upon such assurances and treat goods or services supplied to you under this Agreement as GST-free supplies under the GST law if:
- 29.2.1. you are a non-resident for Australian income tax purposes;
  - 29.2.2. you are not registered or required to be registered for GST purposes in Australia; and
  - 29.2.3. you require the goods and services solely for use in its business or operations outside of Australia,
- 29.3. If goods or services supplied to you are subsequently classified as taxable because any of your assurances were incorrect, you must reimburse us on demand for the GST payable (including any interest, fine, penalty or other amount imposed upon us for failing to collect the GST).
- 29.4. If any taxes, excises or duties are imposed then you:

- 29.4.1. will bear and pay all deductions and withholdings of any taxes, excises or duties directly to the relevant authorities; and
- 29.4.2. separately pay us enough to ensure that we receive the full amount of the Fee on the due date.
- 29.5. You are responsible for obtaining any necessary import licences or permits and for paying any customs or import duties or taxes on such importation.

## 30. General

- 30.1. Amendment: This Agreement may only be amended by written instrument executed by the Parties.
- 30.2. Assignment: A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 30.3. Counterparts: This Agreement may be executed in any number of counterparts that together will form one instrument.
- 30.4. Disputes: If any dispute or claim (including any question regarding its existence, validity or termination) arises out of or in connection with this Agreement (Dispute), either Party may issue a notice to the other Party outlining the dispute or claim (Notice of Dispute). Within 14 days of a Notice of Dispute, senior representatives of the Parties must meet in good faith to resolve the Dispute by negotiation or such other means as they mutually agree. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may:
  - 30.4.1. where the Parties are both located in Australia, refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties; and
  - 30.4.2. where either Party is located outside of Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration (ACICA), with such arbitration to be conducted in Sydney, New South Wales, in English and in accordance with the ACICA Arbitration Rules. The costs of the arbitration will be shared equally between the Parties and the determination of the arbitrator will be final and binding.
- 30.5. Email: You agree that we are able to send electronic mail to you and receive electronic mail from you. You release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 30.6. Entire agreement: This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 30.7. Force Majeure: We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control (including but not limited to epidemics, pandemics,

and Government sanctioned restrictions and orders, whether known or unknown at the time of entering into this Agreement) (Force Majeure Event).

- 30.8. Governing law: This Agreement is governed by the laws of New South Wales, Australia. Subject to clause 30.4, Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 30.9. Publicity: You agree that we may advertise or publicise the broad nature of our provision of the Product and Services to you, including on our website or in our promotional material.
- 30.10. No Exclusivity: The Product and Services will be provided to you on a non-exclusive basis.
- 30.11. Notices: Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 2 Business Days in the case of post, or at the time of transmission in the case of transmission by email (or, where the time of transmission is not on a Business Day, 9am on the next Business Day).
- 30.12. Online execution: This Agreement may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
- 30.13. Relationship of Parties: This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 30.14. Severance: If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

## 31. Definitions

**ACICA** has the meaning given in clause 30.4(2) of this Agreement.

**ACL** has the meaning given in clause 24.1 of this Agreement.

**Agreement** means these terms and conditions, including the Schedule and any Specifications.

**Analytics** has the meaning given in clause 21.1 of this Agreement.

**Assets** has the meaning given in the Schedule.

**Authorised Users** means those users that the Parties agree are authorised to use the Product and Services.

**Business Day** means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays.

**Commencement Date** means the date for the commencement of the Agreement, as set out in the Schedule.

**Computing Environment** means your computing environment including all hardware, software, information technology and telecommunications services and Systems.

**Confidential Information** includes information which:

- a) is disclosed to the Receiving Party in connection with this Agreement at any time;



- b) is prepared or produced under or in connection with this Agreement at any time;
- c) relates to the Disclosing Party's business, assets or affairs; or
- d) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

**Customer Data** means the information, logos, documents, customer information, Personal Information and other data to which you provide us access to, or which is stored by the Product and Services, or generated by the Product and as a result of your use of the Product and Services.

**Delivery Costs** means the costs associated with the delivery of the Product, including any insurance, customs, tariffs, duties or other such charges that may apply to the Product.

**Delivery Location** means the location, agreed between the Parties, for the delivery and/or installation of the Product.

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party.

**Dispute** has the meaning given in clause 30.4 of this Agreement.

**Expense** means any disbursements, travel costs, accommodation costs and third-party costs, reasonably and directly incurred by us or our Personnel for the purpose of the provision of the Product and Services.

**Extended Period** has the meaning given in clause 28.2.2 of this Agreement.

**Feedback** means any idea, suggestion, recommendation or request by you (or any of your Personnel or Authorised Users or customers), whether made verbally, in writing, directly or indirectly, in connection with the Product and Services.

**Fees** has the meaning given in the Schedule.

**Force Majeure Event** has the meaning given in clause 30.7 of this Agreement.

Improvements means any development, modification, adaptation or improvement of Our Materials or any New Materials made by or on behalf of either Party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

**Insolvency Event** means any of the following events or any analogous event:

- a) a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
- b) a Party ceases, or threatens to cease, carrying on business;
- c) a Party is unable to pay the Party's debts as the debts fall due;
- d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;

- e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
- f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business.

**Installation Services** has the meaning given in the Schedule.

**Intellectual Property** means any copyright, registered and unregistered trademarks, designs or patents; domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Breach** means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights including any Intellectual Property Rights of third parties), including, but not limited, to you (or your Personnel):

- a) copying, altering, enhancing, adapting or modifying any of our Intellectual Property;
- b) creating derivative works from our Intellectual Property;
- c) providing or disclosing our Intellectual Property to, or allowing our Intellectual Property to be used by, any third party;
- d) assigning or transferring any of our Intellectual Property Rights or granting sublicenses of any of our Intellectual Property Rights, except as expressly permitted in this Agreement;
- e) reverse engineering or decompiling any of our Intellectual Property Rights, except where permitted by Law; or
- f) using or exploiting our Intellectual Property for purposes other than as expressly stated in this Agreement (including, without limitation, using our Intellectual Property for commercial purposes or on selling our Intellectual Property to third parties).

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Law** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the provision of the Product and Services.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

**Licence** has the meaning given in clause 8.1 of this Agreement.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**New Materials** means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with this Agreement, the Product and Services (including any machine learning algorithms output from the Services), whether before or after the date of this Agreement.

**Notice of Dispute** has the meaning given in clause 30.4 of this Agreement.

**Our Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including the Specifications, Intellectual Property, Product and Services) that we may provide to you under this Agreement, and which may contain

material which is owned by or licensed to us, and is protected by Australian and international laws.

**Payment Terms** has the meaning given in the Schedule.

**Personal Information** is defined in the Privacy Act.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, distributors, partners, subcontractors or agents.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Laws** has the meaning given in clause 22 of this Agreement.

**Privacy Policy** means any privacy policy set out on our website (<https://www.viotel.co/privacy-policy.html>).

**Product** has the meaning given in the Schedule.

**Product Purchase Terms** has the meaning given in the Schedule.

**Product Warranty Period** has the meaning given in the Schedule.

**Professional Services** has the meaning given in the Schedule.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

**Schedule** means the schedule to this Agreement, which set out at the beginning of the Agreement.

**Sensitive Information** is defined in the Privacy Act.

**Services** means the Professional Services, Installation Services and the Subscription Services. We may provide services outside of the above scope however these will be Additional Services for the purposes of this Agreement.

**Site** has the meaning given in the Schedule.

**Software** has the meaning given in the Schedule.

**Specifications** has the meaning given in the Schedule.

**Statutory Rights** has the meaning given in clause 24.1 of this Agreement.

**Subscription Services** has the meaning given in the Schedule.

**System** means all hardware, software, networks and other IT systems used by a Party from time to time, including a network.

**Term** has the meaning given in the Schedule.

**Third Party Inputs** means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the

provision of the Product and Services may be contingent on, or impacted by.

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of this Agreement.

## 32. Interpretation

- 32.1. In this Agreement, unless the context otherwise requires:
- 32.1.1. any reference to "Product and Services" means "Product and/or Services", as the context requires;
  - 32.1.2. a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
  - 32.1.3. a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
  - 32.1.4. a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
  - 32.1.5. no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
  - 32.1.6. a reference to a party (including a Party) to a document includes that party's executors,
  - 32.1.7. administrators, successors, permitted assigns and persons substituted by novation from time to time;
  - 32.1.8. a reference to \$ or dollars refers to the currency of Australia from time to time;
  - 32.1.9. a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally; and
  - 32.1.10. a reference to time is to local time in New South Wales, Australia.

**Last Updated: 28<sup>th</sup> November, 2022.**