



**TERMS AND CONDITIONS**

**JANUARY 2023**

# Customer change and management information support services

**VOCALINK**  
 **mastercard**

# Terms and conditions for Vocalink customer change and management information support services

These are the terms and conditions on which Vocalink supports:

- Customer Changes as described in the customer change support (CCS) process: [www.vocalink.com/customer-change-support/process](http://www.vocalink.com/customer-change-support/process) as may be updated or moved from time to time (the CCS process)
- Customer projects
- Management information requests as described in the management information support process: [www.vocalink.com/management-information/process](http://www.vocalink.com/management-information/process) (MI)
- any other project or activity undertaken by agreement in writing between the customer and Vocalink.

No other terms or conditions shall apply, nor shall these terms and conditions be varied (including in each case by any terms set out in a customer purchase order) unless they are agreed in writing by an authorised signatory of each of Vocalink and the customer and are expressed to override these terms and conditions.

# 1 Definitions and interpretations

## 1.1

In these Terms and Conditions, the following expressions shall have the following meanings unless the context otherwise requires:

**Agreement** means the agreement between the parties for Vocalink to provide services to the Customer (including all Customer obligations set out therein) formed pursuant to: the CCS Process including the CCS Request and response, MI Request and response, together with these Terms and Conditions; or as may be agreed in writing in the Project document

**Annual Service Charges** means the increased charges payable on the anniversary of the Effective Date and each subsequent year. The Annual Service Charge shall be increased by the higher of either:

- i. 1%; or
- ii. the same proportion as the increase in the monthly index figure given by the Retail Price Index over the previous 12 months period.

**CCS Form** means the document set out here: [www.vocalink.com/customer-change-support/ccs-form](http://www.vocalink.com/customer-change-support/ccs-form)

**CCS Process** means the document set out here: [www.vocalink.com/customer-change-support/process](http://www.vocalink.com/customer-change-support/process)

**CCS Request** means the request for Vocalink support of Customer Changes starting the CCS Process using the CSS Form

**MI Request Form** means the document set out here: [www.vocalink.com/management-information](http://www.vocalink.com/management-information)

**MI Process** means the document set out here: [www.vocalink.com/management-information/process](http://www.vocalink.com/management-information/process)

**MI Request** means the request for Management Information starting the MI Process using the MI Request Form

**Cancellation Fees** means

- i. 50% of the charges for the testing time, to be incurred by the Customer, which Vocalink has a right to charge the Customer for cancelling the Services upon less than 14 calendar days' notice; and
- ii. to be the daily weekday rate (as determined by the charges on the CCS Response Form) where less than seven (7) calendar days' notice is provided by the participant for their scheduled live implementation date.

**Charges** means the charges payable by the Customer to Vocalink in consideration of Vocalink:

- performing a feasibility study and producing a customer proposal; and/or
- supporting the change
- as detailed at paragraph 3.2 of the CCS service description or section 4 of the MI Service description
- or those charges described in the Project

**Confidential Information** means all information (in whatever form) in respect of the business of each of the parties including any ideas; business methods; finance; prices, business, financial, marketing or development plans; customer lists or details; computer systems and software; products or services, know-how or other matters connected with products or services manufactured and/or marketed; and information concerning either party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the parties and such persons; which is provided or obtained by one party to or for the other;

**Customer** means any corporation or other legal person which: requests Vocalink to support that entity's business and/or technology changes by submitting a CCS Request pursuant to the CCS Process; submitting an MI request pursuant to the MI Support process or which requires Vocalink to undertake a Project;

**DP Legislation** means the EU General Data Protection Regulation 2016/679 (as amended and replaced from time to time) and the e-Privacy Directive 2002/58/EC (as amended by Directive 2009/136/EC, and as amended and replaced from time to time) and their national implementing legislations; the Swiss Federal Data Protection Act (as amended and replaced from time to time); the Monaco Data Protection Act (as amended and replaced from time to time); the UK Data Protection Act (as amended and replaced from time to time); and the Data Protection Acts of the European Economic Area ("EEA") countries (as amended and replaced from time to time); and the Electronic Communications Act 2000, including applicable regulatory policies, guidelines or industry codes;

**Force Majeure** means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made;

**Intellectual Property** means property in which intellectual property rights of whatever nature (including patents, trade marks, database rights, trade secrets, and present and future copyright) subsist;

**Mastercard Binding Corporate Rules (or Mastercard BCRs)** means the Mastercard Binding Corporate Rules as approved by the EEA data protection authorities and available at [www.mastercard.us/content/dam/mccom/en-us/documents/mastercard-bcrs-february-2017.pdf](http://www.mastercard.us/content/dam/mccom/en-us/documents/mastercard-bcrs-february-2017.pdf)

**Pre-Existing IPR** means any Intellectual Property vested in or licensed to the Customer or Vocalink prior to or independently of the performance by the Customer or Vocalink of their obligations under the Agreement;

**Project** means the project plan, agreed activities, timing and charges agreed between the parties;

**Project Specific IPR** means Intellectual Property in items or materials created by Vocalink (or by a third party on behalf of Vocalink) pursuant to any Agreement and all updates and amendments of these items;

**Services** means Vocalink support of Customer change or MI request as agreed between the parties pursuant to the CCS Process, MI Process, or the Project; and

**Vocalink** means Vocalink Limited (registered as a company in England with number 06119048) whose registered office is at 1 Angel Lane, EC4R 3AB.

## 1.2

In these Terms and Conditions:

1.2.1 any reference to any statute, decree, law, statutory instrument, or other regulation having the force of law shall be deemed to include any lawful modifications thereto or re-enactment thereof from time to time;

1.2.2 any phrase in these Terms and Conditions introduced by the term "include", "including", "in particular", "for example" or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term;

1.2.3 references in these Terms and Conditions to the terms of the "Agreement" shall include these Terms and Conditions, which are incorporated into each Agreement; and

1.2.4 in the event of any conflict or inconsistency between these Terms and Conditions and the Agreement, these Terms and Conditions shall prevail unless and to the extent the Agreement specifically refers to and disappplies any of these Terms and Conditions.

## 2

### **Term**

### 2.1

The Agreement shall commence on the date Vocalink commences work on the Services described therein and terminate on the date the Services are completed.

## 3

### **Relief events**

### 3.1

Vocalink shall not be in breach of any Agreement to the extent its failure to perform, or its delay in performing, any obligation is caused by:

3.1.1 the Customer's failure to perform, or delay in performing, any obligation set out in any Agreement; or

3.1.2 the Customer's failure to provide Vocalink in a timely manner with any relevant information; or

3.1.3 by any impediment which the Customer places in the way of Vocalink performing the Services; or

3.1.4 any action or inaction which is subsequently identified by the parties as being the Customer's proper responsibility, including obtaining any necessary consents or approvals for the relevant Customer Change or MI request (each a "Relief Event").

### 3.2

If a Relief Event occurs, Vocalink shall use its reasonable endeavours to continue to provide the Services. If Vocalink incurs additional costs in performing the Services as a result of any Relief Event, it shall be entitled to recover those additional costs (to the extent they are reasonable) from the Customer.

## 4

### **Charging, invoicing and payment**

### 4.1

All Charges specified in any Agreement or otherwise agreed between the parties shall be exclusive of VAT.

4.2 The Customer shall ensure that all documentation needed for good administration of the Agreement and Services, including but not limited to provision of purchase order numbers needed to prepare invoices, shall be provided in good time as needed and, in any event provided within 30 days of Vocalink's reasonable request.

4.3 Vocalink may invoice the Customer for the applicable Charges together with VAT:

4.3.1 at the intervals specified in the relevant Agreement; or

4.3.2 if no such intervals are specified in the Agreement but the Services are provided on a time and materials basis, monthly in arrears; or

4.3.3 if no such intervals are specified in the Agreement but the Services are provided for a fixed price, at the conclusion of the Services to be provided under that Agreement; or

4.3.4 if Cancellation Fees are due

4.4 The Customer shall pay each invoice rendered pursuant to any Agreement within 30 days of receipt of that invoice.

4.5 If any sum payable under any Agreement is not paid when due then the party entitled to payment may claim interest from the due date until payment is made in full both before and after the judgement, at 3 per cent per annum over The Royal Bank of Scotland plc base lending rate from time to time.

4.6 If the Customer disputes that any Charges invoiced are properly due, the Customer must notify Vocalink of such dispute within 30 (thirty) days of receipt of the relevant invoice, and shall be entitled to withhold payment only of the disputed amount until the matter is resolved. If following a final decision by the courts or other agreement between the parties, it is resolved that the Charges were properly due, the Customer shall pay Vocalink interest on the unpaid sum in accordance with clause 4.5 from the date when the sum fell due.

## 5 **Confidentiality**

5.1 Each party agrees with the other:

5.1.1 to keep the Confidential Information confidential;

5.1.2 not to access or use the Confidential Information save for complying with its obligations under each Agreement; and

5.1.3 not to disclose the same to a third party unless such third party is within its corporate grouping. Is a subcontractor or is a professional adviser who is under a similar duty to protect Confidential Information.

- 5.2 The restrictions contained in clause 5.1 shall apply without limitation in time, but shall cease to apply to information or knowledge which:
- 5.2.1 has in its entirety become public knowledge otherwise than through any unauthorised disclosure or other breach of such restriction;
  - 5.2.2 the other party has consented in writing to being disclosed;
  - 5.2.3 is or has been independently developed by the other party without reference to or use of the Confidential Information; or
  - 5.2.4 is necessarily disclosed pursuant to a statutory or regulatory obligation, or clause 7, but then only to the extent of such required disclosure.

## 6 **Service levels**

- 6.1 Vocalink shall provide those services specified in the CCS Process or MI Process and in accordance with these Terms and Conditions.
- 6.2 The SLAs applicable to the services are set out in the CCS Process and MI Process documents
- 6.3 Vocalink shall provide those Services specified in the Project in accordance with these Terms and Conditions.
- 6.4 The SLAs applicable to the Project (if any) shall be set out in the Agreement.

## 7 **Freedom of information**

- 7.1 Vocalink acknowledges that, to the extent the Customer is obliged (whether by statute, common law or contract law) to do so, the Customer may disclose Vocalink's Confidential Information to the Bank of England, UK Financial Investments Limited, HM Treasury, and/or the Prudential Regulation Authority and Financial Conduct Authority and the professional advisors of these bodies, provided that the Customer ensures such bodies are informed that the information is confidential and that they are subject to terms of confidentiality substantially similar to those set out in these Terms and Conditions or, if this is not possible, that they are at least bound by obligations of confidentiality due to the nature of the functions that they carry out.
- 7.2 The parties acknowledge that the bodies described in clause 7.1 above may be subject to the Freedom of Information Act 2000 ("FOIA") and if so, the Customer shall procure (where lawful and practical to do so) that Vocalink is given prompt written notice of any FOIA request involving Vocalink's Confidential Information so that Vocalink has sufficient opportunity (where possible) to prevent or control the manner of disclosure by appropriate legal means. Following a valid FOIA request, Confidential Information may be disclosed to the person making the request and to other persons as a consequence without the Customer being in breach of these Terms and Conditions.

## 8 Intellectual property

8.1 Neither the Customer nor Vocalink shall acquire any right, title or interest in the other's Pre-Existing IPR.

8.2 All title to and all rights and interest in the Project Specific IPR shall vest in Vocalink. The Customer hereby assigns to Vocalink title to and all rights and interest in the Project Specific IPR, including all associated rights.

8.3 Vocalink hereby grants to the Customer a non-transferrable, royalty free licence to use such of Vocalink's Pre-Existing IPR as is required by the Customer in order to use the Services.

8.4 If requested to do so by Vocalink, the Customer shall at Vocalink's reasonable expense execute all documents and do all such for ther acts as Vocalink may reasonably require to perfect the assignment under clause 8.2.

## 9 Data protection

9.1 For the purposes of clause 9, the terms "Controller", "Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the DP Legislation.

9.2 Where Vocalink Processes any Personal Data pursuant to any Agreement:

9.2.1 Customer is the Controller and Vocalink acts as the Processor for the Processing of Personal Data for the purposes of any Agreement;

9.2.2 Customer authorises Vocalink to Process, as a Processor, for the purposes of providing the Services and provides a general authorisation to appoint both from within its corporate group and external third parties sub-Processors to Process Personal Data in the context of the Services under the conditions set out in clause 9.3; and

9.2.3 Customer authorises Vocalink to Process, as a Controller, Personal Data for reporting, analysis, fraud, security and risk management, and Vocalink represents and warrants that it will Process Personal Data for these purposes in compliance with DP Legislation and the Mastercard BCRs (subject to their applicability).

9.3 Vocalink confirms and warrants that it complies with DP Legislation and will, following subscription to the Mastercard BCRs, comply with the Mastercard BCRs when Processing Personal Data for the Purposes of any Agreement, and that it:

9.3.1 only Processes Personal Data in accordance with Customer's lawful written instructions and not for any other purposes than those specified in the relevant Agreement or as otherwise agreed by both Parties in writing;

9.3.2 bind all sub-Processors to comply with DP Legislation and where such sub-Processors are members of its corporate group, shall bind them to the Mastercard BCRs;

9.3.2 will promptly inform Customer if in its opinion Customer's instructions infringe DP Legislation, or if Vocalink is unable to comply with Customers' instructions;



9.3.4 when any Agreement expires or upon termination of any Agreement or upon a request to delete or return Personal Data, Vocalink will at the choice of Customer, delete, anonymise, or return all the Personal Data to Customer, and delete or anonymise existing copies unless applicable law prevents it from returning or destroying all or part of the Personal Data or requires retention of the Personal Data (in which case Vocalink will protect the confidentiality of the Personal Data and will not actively Process the Personal Data unless required to do so by law).

**9.4** Customer authorises Vocalink to transfer the Personal Data Processed in connection with any Agreement outside of Europe in accordance with the Mastercard BCRs (subject to their applicability) or with any other lawful data transfer mechanism that provides an adequate level of protection under DP Legislation.

**9.5** Customer gives a general authorisation to Vocalink to Process and sub-Process Personal Data to internal and external Sub-Processors in the context of any Agreement.

## **10 Liability and insurance**

**10.1** Neither party excludes its liability (if any):

10.1.1 for personal injury or death resulting from its negligence;

10.1.2 for any matter which it would be unlawful to exclude or to attempt to exclude its liability; or

10.1.3 for fraud.

**10.2** Each Party's entire liability to the other under each Agreement shall be limited to:

10.2.1 if that Agreement is for fixed price work, the fees payable under that Agreement; or

10.2.2 if that Agreement is for work to be performed on a time and materials basis, the amount of fees incurred on a time and materials basis under that Agreement up to the time the event giving rise to the cause of action occurred.

**10.3** Subject to clause 10.1, neither party shall be liable to the other under any Agreement (including in negligence) for any:

10.3.1 indirect or consequential loss

10.3.2 loss of goodwill

10.3.3 damage to reputation

10.3.4 loss of interest

10.3.5 loss of profit

10.3.6 anticipated savings

10.3.7 business or revenue (whether direct or indirect); or

10.3.8 loss of data, and Vocalink shall not be liable for the value of any principal sum of money processed by Vocalink.

## 11 Termination

11.1 Either party may immediately terminate any Agreement by giving notice in writing to the other party without incurring liability to the other party by reason of such termination if:

11.1.1 the other party is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar regulation or statute relating to insolvency or calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, (or a resolution is passed by the directors of the other party to seek a winding up or administration order), or the other party presents or has presented a petition for a winding up order, or presents, or has presented, a petition to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets;

11.1.2 the other party has any distress or execution levied on its assets that is not paid out within 7 (seven) days of its being levied;

11.1.3 the other party suspends or ceases or threatens to suspend or cease to carry on its business;

11.1.4 any event analogous to the above occurs in respect of the other party in any other jurisdiction;

11.1.5 it is entitled to do so pursuant to clause 12.2;

11.1.6 if the other party is in material breach of the Agreement, where such breach is incapable of remedy; or

11.1.7 if the other party is in material or persistent breach of any part of the Agreement, where the breach is capable of remedy, by giving notice in writing to the other party, specifying the breach and requiring it to be remedied, and if the other party fails to remedy such breach within 30 (thirty) days.

## 12 Force majeure

12.1 Neither party to any Agreement shall be deemed to be in breach of that Agreement, or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under the Agreement due to Force Majeure.

12.2 If the Force Majeure in question continues for more than 1 (one) month either party may give notice in writing to the other to terminate the affected Agreement. The notice to terminate must specify the termination date, which must not be less than 10 (ten) days after the date on which the notice is given, and once such notice has been validly given, the relevant Agreement will terminate on that termination date unless the Force Majeure has been resolved.

## 13 Assignment and novation

13.1 Neither party may assign the benefit (including any present, future or contingent interest or right to any sums or damages payable by either party under or in connection with any Agreement) or delegate the burden of any Agreement without the prior written consent of the other party, which the other party may withhold at its absolute discretion.

## 14 **Entire agreement**

14.1 The Agreement will incorporate these Terms and Conditions. Subject to the foregoing, each Agreement contains all the terms which the parties have agreed in relation to the subject matter of the Agreement and the Agreement supersedes any prior written or oral agreements, representations or understandings between the parties in relation to the Services. No variation of the Agreement shall be valid unless it is a formal variation to the Agreement signed by each party. For the avoidance of doubt, notices on Purchase Orders or agreements made by email shall not be effective variations to the Agreement unless confirmed in a formal variation agreement.

14.2 The parties shall not enter into any Agreement wholly or partly in reliance on, nor has either party been given nor shall any party be deemed to have given any warranty, statement, promise or representation made by or on their behalf, other than as expressly set out in the relevant Agreement. To the extent that any such warranties, statements, promises or representations have been given, the recipient party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

14.3 Nothing in this clause 14 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

## 15 **Waiver**

15.1 No failure or delay by a party to exercise any right or remedy provided under any Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. The single or partial exercise by either party of any right, power or remedy under any Agreement shall not in any circumstances preclude any other or further exercise of it, or the exercise of any right, power or remedy.

## 16 **Severance**

16.1 If any court or competent authority finds that any provision of any Agreement or any of these Terms and Conditions are invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

16.2 If any invalid, unenforceable or illegal provision referred to in clause 16.1 above would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## 17 **Notices**

17.1 Any demand, notice or dispute (other than communications in the normal process of progressing the Customer Change or MI request) (each, a "Notice") must be in writing and may be given by hand or sent by first class pre-paid post and shall be deemed to have been duly served:

17.1.1 if delivered by hand, when left at the proper address for service; or

17.1.2 if given or made by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays).

## 17.2

Each Notice shall be made in writing addressed to:

17.2.1 If to the Customer, to the address set out on the CCS or MI Request form submitted as part of the CCS or MI Process, or the or agreed in the Project, or if no such address is specified, any address at which Vocalink reasonably believes the Customer is resident (or such other address as may be notified in writing from time to time in accordance with clause 17.2.2 below); or

17.2.2 If to Vocalink, to

The Company Secretary  
Vocalink Limited  
1 Angel Lane  
London  
EC4R 3AB

or such other address as may be notified in writing from time to time in accordance with clause 17.2.1 above.

## 18

### **Third parties**

### 18.1

The parties to this Agreement do not intend that any of its terms or any terms contained in any Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 19

### **English law**

### 19.1

Each Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

### 19.2

The parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of any Agreement, including in relation to non-contractual obligations.



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