

01 December 14



SOLUTIONS LTD

Bringing clarity and insight into complex environments

**VUEPOINT SOLUTIONS LIMITED**

**MV LITE ACCESS AND USAGE AGREEMENT**

This Agreement is extant from the data of application of the User

## Background

- (A) VPSL has the right to make available certain software applications and platforms to subscribers via the internet for the purpose of viewing market data.
- (B) VPSL has agreed to provide and the Authorised User has agreed to take VPSL's service subject to the terms and conditions of this Agreement.

## Agreed terms

### 1. Interpretation

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

<b>"Authorised Users"</b>	Any person who is authorised by VuePoint Solutions to use the Services and the Documentation, as further described in clause 2.2.4.
<b>"Back-Up Policy"</b>	VPSL's back-up and archiving policy as more fully referenced at clause 5.2.
<b>"Business Day"</b>	any day which is not a Saturday, Sunday or public holiday in the UK.
<b>"Control"</b>	as defined in section 1124 of the Corporation Tax Act 2010.
<b>"Confidential Information"</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.
<b>"Authorised User Data"</b>	the data inputted by the Authorised Users, or VPSL on the User's behalf for the purpose of using the Services or facilitating the User's use of the Services.
<b>"Documentation"</b>	the document made available to the Authorised User by VPSL online via <a href="https://www.etrms.eu">https://www.etrms.eu</a> or such other web address notified to the Authorised User from time to time which sets out a description of the Services and the user instructions for the Services.
<b>"Effective Date"</b>	Date of registration by the Authorised User
<b>"End User Licence Agreement"</b>	an agreement between the Authorised User and a Third Party Data Provider in the form set out in Appendix 1.

<b>"Initial Subscription Term"</b>	NA.
<b>"Normal Business Hours"</b>	9am to 5pm local UK time, each Business Day.
<b>"Renewal Period"</b>	the period described in clause 14.1.
<b>"Services"</b>	the subscription services provided by VPSL to the Authorised User under this Agreement through <a href="https://www.etrms.eu">https://www.etrms.eu</a> or any other website notified to the Authorised User from time to time, as more particularly described in the Documentation
<b>"Software"</b>	the online software applications provided by VPSL as part of the Services.
<b>"Subscription Fees"</b>	the subscription fees payable by the Authorised User to VPSL for the User Subscriptions, as set out in paragraph 1 of schedule 1.
<b>"Subscription Term"</b>	the Initial Subscription Term together with any subsequent Renewal Periods.
<b>"Support Services"</b>	the support services to be provided by VPSL as set out in Schedule 2.
<b>"Third Party Data Providers"</b>	the providers of data accessible through the Services.
<b>"User Subscriptions"</b>	the user subscriptions purchased by the Authorised User pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.
<b>"Virus"</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement. Schedules 1-3 form part of this Agreement as if set out in its main body. If there is any discrepancy between a schedule and the main body of this Agreement the schedule shall prevail.

- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes faxes but not e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **2. User subscriptions**

- 2.1 Subject to the Authorised User registering for the User Subscriptions in accordance with clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, VPSL hereby grants to the Authorised User a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Authorised User's internal business operations.
- 2.2 In relation to the Authorised Users, the Authorised User undertakes that:
  - 2.2.1 Only the Authorised Users may access and use the Services;
  - 2.2.2 will not allow or suffer any User Subscription to be used by anyone other than individual Authorised User;
  - 2.2.3 the Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that the Authorised User shall keep his password confidential;
  - 2.2.4 shall permit VPSL to audit the Services in order to establish the name and password of the Authorised User. Such audit may be conducted no more than once per quarter, at VPSL's expense, and this right shall be exercised with reasonable prior notice, and in such a manner as not to substantially interfere with the Authorised User's normal conduct of business;
  - 2.2.5 if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to VPSL's other rights, VPSL shall promptly disable such

passwords and account and VPSL shall not issue any new passwords to any such individual;

2.3 The Authorised User shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.3.2 facilitates illegal activity;

2.3.3 depicts sexually explicit images;

2.3.4 promotes unlawful violence;

2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and VPSL reserves the right, without liability or prejudice to its other rights to the Authorised User, to disable the Authorised User's access to any material that breaches the provisions of this clause.

2.4 The Authorised User shall not:

2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

2.4.1.1 and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

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

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

2.4.3 use the Services and/or Documentation to provide services to third parties; or

2.4.4 subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or

2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and

2.5 The Authorised User shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify VPSL.

2.6 The rights provided under this clause 2 are granted to the Authorised User only, and shall not be considered granted to any associate, subsidiary or holding company of the Authorised User.

### **3. Additional user subscriptions**

3.1 Not Applicable

3.2 Not Applicable

3.3 Not Applicable

### **4. Services**

4.1 VPSL shall, during the Subscription Term, provide the Services and make available the Documentation to the Authorised User on and subject to the terms of this Agreement.

4.2 VPSL makes now warranty as to when the service is available and can at any time withdraw the service or access to the service

4.3 VPSL shall use reasonable endeavours not to distribute or transmit any Viruses to the Authorised User in the provision of the Services.

### **5. Authorised User data**

5.1 The Authorised User shall own all right, title and interest in and to all of the Authorised User Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Authorised User Data.

5.2 Not Applicable

5.3 If VPSL processes any personal data on the Authorised User's behalf when performing its obligations under this Agreement, the parties record their intention that the Authorised User shall be the data controller and VPSL shall be a data processor and in any such case:

5.3.1 the Authorised User acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Authorised User and the Authorised Users are located in order to carry out the Services and VPSL's other obligations under this Agreement;

5.3.2 the Authorised User shall ensure that the Authorised User is entitled to transfer the relevant personal data to VPSL so that VPSL may lawfully use, process and transfer the personal data in accordance with this Agreement on the Authorised User's behalf;

- 5.3.3 the Authorised User shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 5.3.4 VPSL shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Authorised User from time to time; and
- 5.3.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## **6. VPSL's obligations**

- 6.1 VPSL undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care:
  - 6.1.1 does not warrant that the Authorised User's use of the Services will be uninterrupted or error-free, or that the Services, Documentation and/or the information obtained by the Authorised User through the Services will meet the Authorised User's requirements; and
  - 6.1.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Authorised User acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.2 This Agreement shall not prevent VPSL from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 6.3 Subject to the Authorised User's entry into any required End User Licence Agreement, VPSL warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## **7. Authorised User's obligations**

- 7.1 The Authorised User shall:
  - 7.1.1 provide VPSL with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by VPSL in order to provide the Services, including Authorised User Data, security access information and configuration services;
  - 7.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - 7.1.3 carry out all other Authorised User responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Authorised User's provision of such assistance as agreed by the parties, VPSL may adjust any agreed timetable or delivery schedule as reasonably necessary;

- 7.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 7.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for VPSL, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- 7.1.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to VPSL's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Authorised User's network connections or telecommunications links or caused by the internet.

## **8. Charges and payment**

- 8.1 The Authorised User shall pay the Subscription Fees to VPSL for the User Subscriptions in accordance with this clause 9 and schedule 1.
- 8.2 Not Applicable
  - 8.2.1 Not Applicable
    - 8.2.1.1 Not Applicable and
    - 8.2.1.2 Not Applicable
  - 8.2.2 Not Applicable
    - 8.2.2.1 Not Applicable; and
    - 8.2.2.2 Not Applicable
- 8.3 Not Applicable
  - 8.3.1 Not Applicable
  - 8.3.2 Not Applicable
- 8.4 All amounts and fees stated or referred to in this Agreement:
  - 8.4.1 shall be payable in pounds sterling;
  - 8.4.2 are, subject to clause 13.4.2, non-cancellable and non-refundable;
  - 8.4.3 are exclusive of value added tax, which shall be added to VPSL's invoice(s) at the appropriate rate.
- 8.5 Not Applicable

## **9. Proprietary rights**

- 9.1 The Authorised User acknowledges and agrees that VPSL and/or its licensors own all intellectual property rights in the Software, the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Authorised User any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.
- 9.2 Subject to the Authorised User's entry into any necessary End User Licence Agreements, VPSL confirms that it has all the rights in relation to the Software, the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

## **10. Confidentiality**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 10.1.2 was in the other party's lawful possession before the disclosure;
  - 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement, with the exception that VPSL may make available the Authorised User's Confidential Information to its licensors and to subcontractors, provided that such parties are made aware of the provisions of this clause 11.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents, or in the case of VPSL the entities referenced in clause 11.2, in violation of the terms of this Agreement.
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 10.5 The Authorised User acknowledges that details of the Services, and the results of any performance tests of the Services, constitute VPSL's Confidential Information.
- 10.6 VPSL acknowledges that the Authorised User Data is the Confidential Information of the Authorised User.
- 10.7 This clause 11 shall survive termination of this Agreement, however arising.

## **11. Indemnity**

- 11.1 The Authorised User shall defend, indemnify and hold harmless VPSL against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Authorised User's use of the Services and/or Documentation, or breach of any End User Licence Agreement, provided that:
  - 11.1.1 the Authorised User is given prompt notice of any such claim;
  - 11.1.2 VPSL provides reasonable co-operation to the Authorised User in the defence and settlement of such claim, at the Authorised User's expense; and
  - 11.1.3 the Authorised User is given sole authority to defend or settle the claim.
- 11.2 VPSL shall defend the Authorised User, its officers, directors and employees against any claim that the Services or Documentation infringes any third party's United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Authorised User for any amounts awarded against the Authorised User in judgment or settlement of such claims, provided that:
  - 11.2.1 VPSL is given prompt notice of any such claim;
  - 11.2.2 the Authorised User provides reasonable co-operation to VPSL in the defence and settlement of such claim, at VPSL's expense; and
  - 11.2.3 VPSL is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, VPSL may procure the right for the Authorised User to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement at any time without any additional liability or obligation to pay liquidated damages or other additional costs to the Authorised User.
- 11.4 In no event shall VPSL, its employees, agents and sub-contractors be liable to the Authorised User to the extent that the alleged infringement is based on:
  - 11.4.1 a modification of the Software, Services or Documentation by the Authorised User; or

- 11.4.2 the Authorised User's use of the Software, Services or Documentation in a manner contrary to the instructions given to the Authorised User by VPSL; or
- 11.4.3 the Authorised User's use of the Software, Services or Documentation after notice of the alleged or actual infringement from VPSL or any appropriate authority; or
- 11.4.4 any breach by the Authorised User of the terms and conditions set out in Schedule 3 or an End User Licence Agreement.
- 11.5 The foregoing states the Authorised User's sole and exclusive rights and remedies, and VPSL's (including VPSL's employees', agents' and subcontractors') entire obligations and liability under this Agreement, for infringement of any third party's patent, copyright, trade mark, database right or right of confidentiality.

## **12. Limitation of liability**

- 12.1 This clause 13, together with the additional terms set out in Schedule 3, limits the financial liability of VPSL (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Authorised User:
  - 12.1.1 arising under or in connection with this Agreement;
  - 12.1.2 in respect of any use made by the Authorised User of the Services and Documentation or any part of them; and
  - 12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly and specifically provided in this Agreement:
  - 12.2.1 the Authorised User assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Authorised User, and for conclusions drawn from such use. VPSL shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to VPSL by the Authorised User in connection with the Services, or any actions taken by VPSL at the Authorised User's direction;
  - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - 12.2.3 the Services and the Documentation are provided to the Authorised User on an "as is" basis.
- 12.3 Nothing in this Agreement excludes the liability of VPSL:
  - 12.3.1 for death or personal injury caused by VPSL's negligence; or
  - 12.3.2 for fraud or fraudulent misrepresentation, or any other liability that cannot be lawfully excluded or limited under applicable law.

- 12.4 Subject to clause 13.2 and clause 13.3:
- 12.4.1 VPSL shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- 12.4.2 VPSL's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to £1.

### **13. Term and termination**

- 13.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall terminate:
- 13.1.1 Not Applicable
- 13.1.2 Not Applicable
- 13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
- 13.2.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 1 day of that party being notified in writing of the breach; or
- 13.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- 13.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 13.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- 13.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- 13.2.6 the other party ceases, or threatens to cease, to trade; or

- 13.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 13.3 VPSL may terminate this Agreement at any time.
- 13.4 On termination of this Agreement for any reason:
  - 13.4.1 all licences granted under this Agreement shall immediately terminate;
  - 13.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 13.4.3 VPSL may destroy or otherwise dispose of any of the Authorised User Data in its possession;
  - 13.4.4 all Subscription Fees for the Initial Subscription Term shall become immediately due and payable, whether or not invoiced at such date; and
  - 13.4.5 the accrued rights of the parties as at termination, or the continuation after termination or the coming into effect of any provision expressly stated to survive or come into effect or implicitly surviving or coming into effect on termination, shall not be affected or prejudiced.

#### **14. Force majeure**

VPSL shall have no liability to the Authorised User under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Authorised User is notified of such an event and its expected duration.

#### **15. Waiver**

- 15.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

#### **16. Severance**

- 16.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with

whatever modification is necessary to give effect to the commercial intention of the parties.

**17. Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

**18. Entire agreement**

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

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

**19. Assignment**

19.1 The Authorised User shall not, without the prior written consent of VPSL, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

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

**20. No partnership or agency**

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

**21. Third party rights**

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

**22. Notices**

22.1 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the

notice at the address provided above or as otherwise specified by the relevant party by notice in writing to each other party.

- 22.2 Any notice shall be deemed to have been duly received:
  - 22.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;
  - 22.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second Business Day after posting; or
  - 22.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 22.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.
- 22.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **23. Variation**

Unless expressly provided otherwise, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### **24. Governing law and jurisdiction**

- 24.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 24.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

**Schedule 1**  
**Subscription Fees**

**1. VPSL MV Lite Service Licence Fees**

The services provided by MV Lite (Free) are provided at the sole discretion of VPSL and may be terminated without reason at any time. There is no charge for this service option.

**Schedule 2  
Support Services**

NA

**Schedule 3**  
**Third Party Data Providers – additional terms and conditions**

**ELEXON limited (EL)**

In this part 3 of schedule 3, the following words have the following meanings:

**"BMRS data"** means the data processed and analysed by VPSL under its agreement with el.

**"Derived data"** means analysis, data, reports or product relating to, derived from or relying on the BMRS data (whether in whole or part).

**"High grade service"** means the isdn line used by el for the provision of BMRS data in "real time" to VPSL.

1.1 VPSL hereby notifies the customer that BMRS data included within derived data is "indicative data" only.

1.2 if the customer intends to or does further publish derived data and such derived data states or it is clear that it is based on or relies upon BMRS data and/or it contains data identifiable as being BMRS data, the customer acknowledges that VPSL is obliged to inform el of the customer's identity and VPSL may not be able to provide derived data to the customer until the customer has entered into a licence agreement acceptable to el.

1.3 the customer acknowledges and agrees that it shall not have any claim or entitlement whatsoever or howsoever arising against VPSL, el or any other person in relation to or as a result of each or any of the following:

1.3.1 The provision (including access to), supply, receipt, obtaining or availability of and/or any delay or failure to provide, supply, receive or obtain or to make available (in each case in whole or in part) any BMRS data or derived data;

1.3.2 any corruption, omission, error, inaccuracy, incompleteness, unreliability, lack of currency or lack of updating of or in any BMRS data or derived data provided, supplied, received, obtained or made available pursuant to this agreement;

1.3.3 any act, omission, delay or failure by el or any of its agents in relation to the making available, making arrangements to make available, installation, operation, support and maintenance of the high grade service for VPSL; and

1.3.4 Any delay or defect in relation to the installation, operation, support and maintenance of the high grade service for VPSL.

1.4 the customer acknowledges that any BMRS data and derived data is provided to it on an "as is" basis and that neither el nor VPSL shall be deemed to warrant or guarantee or make any representation (whether express or implied) as to the title, completeness, accuracy, reliability, freedom from error, method of preparation, currency, updating,

merchantability or fitness for the purpose or for any particular purpose (whether or not any such purpose has been notified to el or VPSL) of BMRS data or derived data and/or any use of or dealing with it.

1.5 notwithstanding paragraph 1.4 above, the customer in any event waives each and all warranties and guarantees in respect of the BMRS data and derived data to the utmost extent permitted by law.

1.6 subject to clause 13.3 of this agreement, the use by the customer of BMRS data and derived data shall be at the sole risk and responsibility of the customer and el and VPSL shall have no liability or responsibility whatsoever and howsoever arising (whether directly or indirectly) as a result of or in connection therewith, including in respect of each and all loss of profits, loss of revenue, loss of goodwill, loss of contracts, loss of business or production, indirect loss, economic or consequential loss, claims, demands, proceedings, actions, losses, liabilities, damages, costs, charges and expenses (whether or not any of the foregoing are foreseeable), and the customer shall not otherwise assert

1.7 the customer acknowledges and agrees that the exclusion of warranties and limitation of liability set out in this part 3 of schedule 3 are reasonable and fair in all the circumstances.

1.8 The customer undertakes to ensure that BMRS data and derived data in its possession or under its control is kept securely and properly protected at all times from unauthorised access or use and against misuse by any person.

1.9 where the customer's connections to the services is or has been or is likely to be subject to a virus, internet-borne attack, security breach or other event or incident which might adversely affect el, VPSL, BMRS data, derived data or the high grade service (**system threat**), the customer shall on becoming aware of such a system threat shall:

1.9.1 take such immediate and effective steps as are available to it or within its power to protect each and all of EL, VPSL, BMRS data, derived data and the high grade service from being or potentially being adversely affected (or to protect it or prevent it from being further adversely affected). These steps shall (unless demonstrably unnecessary) include immediately ceasing to use the services, BMRS data and derived data and to immediately terminate or suspend all access to, connection with or use of the services, BMRS data and derived data;

1.9.2 Give immediate notice of the system threat to VPSL (for onward transmission to EL); and

1.9.3 Give immediate notice to VPSL (for onward transmission to EL) once the system threat has been resolved.

1.10 the customer acknowledges that EL reserves the right not to provide or to immediately cease providing VPSL with the high grade service and BMRS data (and/or with access to it) in the event there has been or may be a system threat to el systems, or those of its agents, the high grade service or BMRS data from whatever source or cause, and that this may impact on the services.

1.11 on termination of VPSL's agreement with EL, the customer shall cease to have the right to use the BMRS data and derived data and shall send an undertaking to VPSL (for onward transmission to EL) confirming that it has ceased to use the BMRS data and the derived data.

Executed by **VUEPOINT SOLUTIONS LIMITED**, acting by MARK TAYLOR, a director

A handwritten signature in black ink, appearing to be 'MT', with a long horizontal stroke extending to the right.

Executed by the Authorised User on initial access of the Service.