



# VoD Communications (Pty) Ltd

(Hereafter referred to as "VoD")

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Reg: 2009/023400/07

VAT Reg: 4040236053

## Terms and Conditions of Sale

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### Terms and Conditions ("Terms")

Last updated: 2021-08-01

#### **PLEASE READ THESE TERMS AND CONDITIONS ("TERMS", "TERMS AND CONDITIONS") CAREFULLY:**

Your access to and use of the VoD Products and Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all customers, users and others who access or use the VoD Products and Service.

By accessing or using the VoD Products and Service you agree to be bound by these Terms. If you disagree with any part of the terms then you may not access the VoD Products and Services.

Unless you have another valid agreement with VoD in respect of specific products or support services or Licenses purchased from VoD or unless other VoD terms or additional VoD terms are specified on any VoD electronic store or web site for a specific product, support or License, the terms and conditions contained in this document ("these terms") will apply and govern all VoD sales.

By using, downloading, installing, copying or accessing a product or support service, or by choosing the "I accept" option located on or adjacent to the screen where these terms are displayed, you agree to these terms. If you are accepting these terms on behalf of another person or a legal entity, you represent and warrant that you have full authority to bind that person or legal entity to these terms.

If you do not agree to these terms, do not use, download, install, copy or access the product or support services and promptly return the product with proof of purchase to VoD and obtain a refund of the amount you paid, if any. If you downloaded any product that is not supplied by VoD, contact the party from whom you acquired it.



## INTRODUCTION

These Terms are comprised of various sections. The basic terms and conditions applying to all sales are contained in section A and the additional terms applying to sales of Hardware, Software and Support are contained in sections B, C and D respectively.

## A. BASIC TERMS AND CONDITIONS

### 1. Definitions

- a) **"Customer"** means the purchaser of Products and/or Support and/or Licenses from VoD.
- b) **"Deliverables"** means the tangible work product resulting from the performance of Support excluding Products and Custom Products.
- c) **"Hardware"** means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
- d) **"Product(s)"** means Hardware, Software and Licenses and include products that are modified, altered or customized to meet Customer's requirements ("Custom Products").
- e) **"SDKs"** means any Software Development Kits/toolkits which enable integration with various functions including integration with VoD Products.
- f) **"Software"** means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals and operating procedures.
- g) **"Specification(s)"** means technical information about Products published in VoD's product manuals, user documentation and technical data sheets in effect on the date on which VoD delivers Products to Customers.
- h) **"VoD Affiliate(s)"** means VoD's holding company, VoD Limited, and any of the other entities under the control of VoD Limited.
- i) **"VoD Branded"** means Products and Support Supplied by VoD or bearing VoD's or any VoD Affiliate's trademark or service mark, and embedded VoD selected third party Software that is not offered under a third-party license agreement.
- j) **"Statement of Work"** means a document so titled that describes the Support / duties to be performed by VoD under section D of these Terms.
- k) **"Support"** means Hardware maintenance and repair, Software maintenance/upgrades, training, consultation, installation, project management, configuration, other standard support services provided by VoD and any agreed non-standard Support as described in a Statement of Work ("Custom Support").
- l) **"Transaction Document(s)"** means any or all of:
  - a) valid VoD quotation, proposal or tender;
  - b) an accepted Customer order in relation to that quotation or proposal;
  - c) license terms delivered or otherwise made available to Customer with Software;
  - d) VoD published technical data sheets or service descriptions;
  - e) VoD warranty statements delivered with or otherwise made available to Customer with Products, Statements of Work; and
  - f) any other documents that refer to these Terms or made available to the Customer.
- m) **"Version"** means a release of Software that may contain new features, enhancements, and/or maintenance updates, or, for certain Software, a collection of revisions packaged into a single entity, made available by VoD to Customer (also called a "Release").



## 2. Prices and taxes

- a) **Prices.** Product and Support prices are specified in the VoD price list current at the time VoD receives Customer's order or in a Transaction Document. Prices are subject to change at any time prior to VoD's acceptance of Customer's order unless stated otherwise in a Transaction Document.
- b) **Rate of Exchange Variations.** Where prices are subject to rate of exchange variations, VoD will as soon as possible after acceptance of Customer's order, obtain, at its own expense, forward cover for any change in the rate of exchange. The rate at which such cover is obtained will be used to calculate the final price and Customer will be advised of the final price immediately thereafter. In adjusting prices in terms of this clause, VoD will be obliged to disclose to Customer only the amount subject to variation and the rate at which forward cover was obtained. Customer will not be entitled to any other information relating to the cost or price analysis.
- c) **Price Validity.** Prices are valid for the period set out in a Transaction Document. Thereafter prices may be increased at a rate equal to that expressed in the Consumer Price Index (CPIX) compounded per annum. Any additional increases will be subject to negotiation with Customer.
- d) **Taxes.** Prices are exclusive of and Customer will pay, all taxes, duties, levies, fees or other similar charges imposed on VoD (other than taxes imposed on VoD's income) or on the Customer by any taxing authority in connection with Customer's order unless Customer has provided VoD with an appropriate resale or exemption certificate.

## 3. Customer orders

- a) **Orders.** Orders will be governed by these Terms and are subject to acceptance by VoD. Orders must specify a "ship to" address within the country in which VoD is to accept the Order and have a delivery date within ninety (90) days from the order date unless otherwise provided in a Transaction Document.
- b) **Cancellation.** Customer may cancel an order for Products (but not Custom Products) at a **15% cancellation fee** up to ten (10) business days prior to the scheduled delivery date.
- c) **Extended Delivery Dates.** Changes to orders that extend delivery dates beyond **ninety (90) days** from the original order date will be considered new orders and charged at the prices in effect at the time when VoD receives the changed order.

## 4. Delivery of Products

- a) **Delivery.** VoD will deliver Products, Ex Works, to the "ship to" address specified in Customer's order within the country in which VoD accepted the order. VoD may elect in its sole discretion to deliver Software, Deliverables, Specifications or Product documentation by enabling electronic transmission to or electronic access to or download by Customer in the country where VoD accepted the order.
- b) **Delivery Charges.** Delivery costs incurred by VoD including, but not limited to shipping, special packing, transportation and handling charges, are payable by Customer unless otherwise specified in a Transaction Document.
- c) **Delivery Requirements.** If VoD is unable to meet Customer's Product delivery requirements in full on time, Customer may cancel any undelivered part of that order and such cancellation will be Customer's sole remedy against VoD. If part delivery only is affected by VoD, such part delivery must be accepted by Customer. Any costs incurred by VoD as a result of Customer's failure to accept delivery will be recoverable from Customer. Any Products delivered by VoD to Customer will be deemed to conform to the description and quantity specified in VoD's delivery note, without damage of any nature, unless Customer notifies VoD to the contrary within seven (7) days of the date of delivery.



## 5. Payment

- a) **Payment Terms.** Customer agrees to pay, free of exchange and without set-off or deduction, all invoiced amounts on delivery, or, if payment terms have been afforded to Customer in terms of a credit facility agreement, within thirty (30) days of VoD's invoice date. VoD may change credit or payment terms for unfulfilled orders if, in VoD's reasonable opinion, Customer's financial condition, payment record, or relationship with VoD merits such change.
- b) **Payment Currency.** Payments to VoD will be in the currency of the Republic of South Africa unless payment in another currency is specified in a Transaction Document.
- c) **Customer Default.** VoD may discontinue performance if Customer fails to pay any amount on its due date. If any amount is not paid on its due date, the full balance at that stage outstanding will immediately become due and owing to VoD even if any portion of such balance is not yet due for payment.
- d) **Reservation of Ownership.** Ownership in the Products will not pass to Customer until payment therefore is made in full. Customer will execute any paperwork required by VoD to protect its ownership in the Products and will permit VoD, in addition to any other remedies which it may have, to repossess any Products in respect of which payment in full has not been timeously made.
- e) **Certificate of Indebtedness.** A certificate signed by a director or financial manager of VoD, whose authority need not be proved, specifying the amount of Customer's indebtedness to VoD will be prima facie proof of the amount of such indebtedness.

## 6. Warranty provisions

- a) **Warranty Statements.** VoD's warranty statements for Hardware, Software and Support are contained in the relevant sections (B, C or D as the case may be) of these Terms. The warranties given are subject to the terms, limitations, and exclusions contained in the relevant sections. Different warranty statements as detailed in a Transaction Document may apply if Products are purchased as part of a system.
- b) **Transfer.** Warranties are transferable to another party for the remainder of the warranty period subject to the license transfer terms referred to in section C and any assignment restrictions.
- c) **Delivery Date.** Warranties begin on the date of delivery or on the date of installation if installed by VoD, whichever is the later.
- d) **Exclusions.** VoD has no obligation to provide warranty services or Support and no liability for any claims resulting from:
  - 1) improper site preparation or site or environmental conditions that do not conform to VoD's site specifications or non-industry standard specifications; or
  - 2) Customer's non-compliance with Specifications or the terms contained in Transaction Documents; or
  - 3) improper or inadequate maintenance or calibration; or
  - 4) Customer or third-party media, software, interfacing, supplies or other products; or
  - 5) modifications or repairs not performed or authorized by VoD; or
  - 6) virus, infection, worm or similar malicious codes not introduced by VoD; or
  - 7) abuse, abnormal usage, neglect, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances or transportation, other than by VoD; or
  - 8) other causes beyond VoD's control.
- e) **Non-VoD Branded Products and Support.** Third-party Products, Software and Support provided by VoD that are not VoD Branded or are branded "AS IS" are provided without warranties of any kind.
- f) **Disclaimer.** The warranties and any associated remedies expressed or referred to in these Terms are exclusive. No other warranties, written or oral, are expressed or implied by VoD and no other warranties may be inferred from a course of dealing or usage of trade. To the extent allowed by law, VoD disclaims all implied warranties or conditions including any implied warranties of merchantability and fitness for a particular purpose, title and non-infringement.



## 7. Intellectual property infringement

- a) **Third-Party Claims.** Should there be any claim against Customer alleging that VoD branded Products or Support (excluding Custom Products and Custom Support) provided under these Terms infringe intellectual property rights in the country where they were sold, then VoD may modify the VoD Branded Products or Support, procure any necessary license or replace the affected item with one that is at least as functionally equivalent. If VoD determines that none of these alternatives is reasonably available, then VoD will issue Customer a refund equal to:
  - 1) the purchase price paid for the affected item if the claim is made within one year of delivery, or the Customer's net book value for the affected item if the claim is made thereafter; or
  - 2) if the claim relates to infringing Support, the lesser of twelve (12) months charges for the claimed infringing Support or the amount paid by Customer for that Support.
- b) **Exclusions.** VoD has no obligation and no liability for any claim of infringement arising from:
  - 1) VoD's compliance with Customer or third-party designs, specifications, instructions, or technical information; or
  - 2) modifications made by Customer or a third party; or
  - 3) Customer non-compliance with the Specifications or the terms of Transaction Documents; or
  - 4) Customer use with products, software, or services that are not VoD Branded and Customer indemnifies VoD against all claims arising from any of the causes referred to in this clause 7(b).

## 8. Intellectual property rights

No rights in copyright, patents, trademarks, trade secrets, or other intellectual property (including in respect of adaptation, development or modification of Products and any connected discoveries) are granted by VoD to Customer except as expressly provided under these Terms. Customer will not register or use any mark or internet domain name that contains VoD's or its Affiliates' trademarks (e.g. "VoD", "VODCS" or "VC"). If any intellectual property rights are found to be registrable and patentable by VoD, VoD will be entitled to apply for such registration in its or its Affiliates' name(s) in whichever country it chooses and Customer will, if and when required by VoD and at VoD's expense, do all things and execute all documents necessary for vesting the protection and all right, title and interest in the intellectual property in VoD (or such VoD Affiliate(s) as VoD may specify) absolutely and as sole beneficial owner.

## 9. Restricted use

Products Support and Deliverables are not specifically designed, manufactured or intended for use as parts, components, or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Customer is solely liable if Products, Support or Deliverables purchased by Customer are used for these applications and Customer indemnifies and holds VoD harmless from all loss, damage, expense or liability in connection with such use.

## 10. Limitation of liability and remedies

- a) **Limitation of Liability.** Except as provided for in clause 7 of this section A and except for damages for bodily injury (including death) caused by VoD, VoD's total aggregate liability, regardless of how it arises, is limited to the amount paid by Customer for:
  - 1) the Product; or
  - 2) Support, not used, in the initial twelve (12) months preceding the relevant event.
- b) **Disclaimer.** VoD will not under any circumstances be liable for any incidental, indirect, special, or consequential loss or damages including, without limitation: downtime costs, lost business, lost revenues, lost profits, failure to realize expected savings, loss or unavailability of or damage to data, or for Software restoration. To the extent allowed by law, these exclusions will apply regardless of the basis of liability, including negligence, misrepresentation, breach of any kind, or any other claims in contract, tort (delict) or otherwise.



## 11. Confidential Information

Confidentiality as specified in the VoD Communications Non-Disclosure Agreement.

By agreeing to these terms, the undersigned/Customer also agree to the VoD Communications' Non-Disclosure Agreement.

## 12. General

- a) **Internal Use.** Products and Support acquired by Customer under these Terms are solely for Customer's own internal use and not for resale or sub-licensing.
- b) **Force Majeure.** VoD will not be liable for performance delays or for non-performance due to causes beyond its control.
- c) **Assignment.** Customer may not assign, delegate or otherwise transfer all or any part of its rights or obligations under these Terms without prior written consent from VoD.
- d) **Governing Law.** Disputes arising from or in connection with these Terms will be governed by the laws of the Republic of South Africa.
- e) **Legal Costs.** If VoD instructs attorneys to recover any outstanding sum of money or any Products from Customer, Customer will be liable to pay all legal costs incurred by VoD on the scale as between attorney and client.
- f) **Insolvency.** If Customer is provisionally or finally wound up or sequestered, or is unable to pay its debts when due, VoD may terminate its obligations to Customer.
- g) **Notices.** All notices that are required under these Terms will be in writing and be considered as validly delivered by hand or prepaid registered post to Customer's or VoD's domicilium or by telefax or e-mail to Customer's or VoD's telefax number or e-mail address at the time and will be considered effective on the date of delivery if delivered by hand or seven (7) days after mailing if sent by pre-paid registered mail or on the date of successful transmission/sending if transmitted/sent by telefax/e-mail.
- h) **Domicilium.** Customer chooses as its domicilium citandi et executandi for all purposes arising out of or in connection with these Terms, the "ship to" address indicated in Customer's order. VoD chooses as its domicilium citandi et executandi for all purposes arising out of or in connection with these Terms, the physical address indicated on page one of these Terms. VoD and Customer may change their domicilium addresses from time to time on not less than ten (10) days written notice to each other.
- i) **Entire Agreement.** These Terms represent the entire agreement between VoD and Customer and supersede and replace any previous communications, representations or agreements and Customer's own, additional or inconsistent terms, whether oral or written.
- j) **Non-Variation.** No variation of these Terms will be of any force or effect unless in writing and signed by VoD.
- k) **Waiver.** VoD's failure to exercise or delay in exercising any rights under these Terms will not constitute or be deemed a waiver or forfeiture of those rights.
- l) **Order of Precedence.** Unless otherwise agreed or provided herein, documents will apply in the following descending order of precedence in the event of any interpretational conflicts:
  - 1) license terms or warranty statements contained in Transaction Documents delivered or otherwise made available to Customer with Products or Support;
  - 2) these Terms;
- m) **Marketing Material, Content and Mailing Lists.** Unless otherwise agreed in an Opt-out procedure, Web Page or email, VoD will include all re-seller partners and customers, whether previously engaged or current, when sending, distributing or publishing any marketing email, web content or official content. VoD will comply with all regulations in terms of the Protection of Personal Information (POPI) act, and will respect the wishes of partners and customers to be included or excluded in any marketing campaigns.





## **B. HARDWARE TERMS AND CONDITIONS**

### **1. Risk of loss.**

Risk of loss or damage to Hardware will pass to Customer upon delivery to the "ship to" address specified in clause 4(a) of section A or, if special shipping arrangements are agreed, upon delivery to Customer's carrier or designee.

### **2. Installation.**

If installation services are to be provided by VoD, Customer will prepare its premises and make available facilities in accordance with VoD's site guidelines. Upon delivery, Customer will place each item of Hardware in its designated location. Installation will be billed at VoD's installation charges at the time unless quoted as part of the purchase price. Any costs associated with any alterations required at Customer's premises for the purpose of installation (including, but not limited to, electrical, structural and non-structural alterations, and the supply of emergency electrical power generating equipment or disaster recovery equipment) will be borne by Customer. Installation by VoD will be deemed complete at such time as the Hardware passes VoD's standard installation and acceptance test procedures.

### **3. Hardware warranty.**

VoD warrants Hardware against defects in materials and workmanship under normal use during the warranty period (being twelve (12) months from the date of delivery unless otherwise stated in Transaction Documents or by the OEM) and warrants that Hardware will materially conform to Specifications for the time period specified in the applicable Transaction Documents. Customer accepts that Hardware may contain used parts that are equivalent to new in performance and reliability and are warranted as new.

### **4. Operation.**

VoD does not warrant that the operation of Hardware will be uninterrupted or error free, or that Hardware will operate in Hardware and Software combinations other than as expressly indicated by VoD in the Specifications, or that Hardware will meet requirements specified by Customer. Customer may only use firmware embedded in Hardware to enable that Hardware to function in accordance with its Specifications.

### **5. Exclusive remedies.**

Upon notice of a valid warranty claim during the warranty period and provided that reasonable access to Hardware is afforded, VoD will repair any warranted defects in materials and workmanship, or correct any warranted material non-conformance to Specifications, or replace such Hardware with Hardware of equal or better functional performance. Subject to the terms of the Product warranty statement applicable to Customer, Customer will pay expenses for return of Hardware to VoD. VoD will pay expenses for shipment of repaired or replacement Hardware to Customer. VoD's entire liability for Hardware warranty claims is limited to that provided for in this clause 5.



## C. SOFTWARE LICENSE TERMS AND CONDITIONS

### 1. License grant.

VoD grants Customer a non-exclusive, non-transferable license to "Use", in object code form, the Version or Release of the VoD Branded, provided or distributed Software delivered by VoD as well as, where SDKs are provided, a development integration License to enable proper testing of developed applications and to develop integration code (the "SDK License").

Unless otherwise specified in Transaction Documents, "Use" means to install, store, load, execute and display one copy of the Software on one device at a time for Customer's internal business purposes. Customer's Use of such Software is subject to these license terms and any Use restrictions and authorizations for the Software specified by VoD in the Transaction Documents accompanying or otherwise made available to Customer with Software.

### 2. Third-party software.

VoD accepts no responsibility or liability for or in connection with the use of non VoD Branded or 3<sup>rd</sup> Party distributed Software.

### 3. Ownership.

The Software license confers no title or ownership on Customer and Customer is restricted to the Use thereof.

### 4. Acceptance.

Save as provided for in clause 7 of this section C, Software and Software Licenses may not be returned once delivered.

### 5. Upgrades.

Software Versions or maintenance updates, if available, may be ordered separately or may be available through Software Support. VoD will require additional licenses and fees for Software Versions or separately purchased maintenance updates or for Use of Software in conjunction with upgraded Hardware or Software. When Customer obtains a license for a new Software Version, Customer's license for the earlier Version will terminate. Software Versions are subject to the license terms in effect on the date that VoD delivers or makes the Version available to Customer.

### 6. License restrictions.

- a) **Use Restrictions.** Customer may not exceed the number of licenses, agents, tiers, nodes, seats or other Use restrictions or authorizations paid for by Customer. Some Software may require license keys or contain other technical protection measures. Customer may not download, create, develop, distribute or use any device to breach or overcome VoD's protection or security measures and settings or any part thereof and may not assist or allow any third party to do so. Customer acknowledges that VoD may monitor Customer's compliance with Use restrictions and authorizations remotely or otherwise. Should VoD make a license management program available which records and reports license usage information, Customer agrees to appropriately install, configure and execute such license management program beginning no later than ninety (90) days from the date it is made available to Customer and continuing for the period that Software is used.





- b) **SDK License.** Customer may not use SDKs in production systems. Integration codes or application codes developed by Customer through the use of SDKs may be used in production systems only if the required number of valid run time Licenses is obtained from VoD.
- c) **Copy and Adaptation.** Unless otherwise permitted by VoD, Customer may only make copies or adaptations of Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of Software. If Customer makes a copy for backup purposes and installs such copy on a backup device, unless otherwise provided in the Transaction Documents, Customer may not operate such backup installation without paying an additional license fee, except in cases where the original device becomes inoperable. If a copy is activated on a backup device in response to failure of the original device, the Use on the backup device must be discontinued when the original or replacement device becomes operable. Customer may not copy Software onto or otherwise Use or make it available on, to, or through any public or external distributed network. Licenses that allow Use over Customer's intranet require restricted access by authorized users only.
- d) **Copyright Notice.** Customer must reproduce all copyright notices that appear in or on Software (including documentation) on all permitted copies or adaptations. Copies of documentation are restricted to internal use.
- e) **Designated System.** Notwithstanding anything to the contrary in these Terms, the Software license for certain Software, as identified in Transaction Documents or by the combination of a unique number and a specific system type ("Designated System"), is non-transferable and for use only on a VoD supplied computer or product owned, controlled, or operated by or solely on behalf of Customer. Such license will terminate in the event of a change in either the system number or system type, an unauthorized relocation, or if the Designated System ceases to be within the possession or control of Customer.
- f) **Operating System Software.** Operating system Software may only be used by Customer when operating the associated Hardware in configurations as approved, sold, or subsequently upgraded by VoD or an authorized VoD business partner.
- g) **Changes.** Customer will not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Software.
- h) **Use for Service Provision.** Extending the Use of Software to any person or entity other than Customer as a function of providing services (i.e. making Software available through a commercial timesharing or service bureau) must be authorized in writing by VoD prior to such use and may attract additional licenses and fees.

## 7. License term and termination.

VoD may terminate the Software license upon notice for failure to comply with these Terms. Immediately upon termination of the Software license or upon expiration of any individual limited term license, Customer will destroy the Software and all copies thereof or return them to VoD. Customer will remove and destroy or return to VoD any copies of Software that are merged into adaptations, except for individual pieces of data in Customer's database. Customer may retain one copy of the Software subsequent to termination solely for archival purposes. At VoD's request, Customer will certify in writing to VoD that Customer has complied with these requirements.

## 8. License transfer.

Customer may not sublicense, assign, transfer, rent, or lease Software or the Software license to any other party except as permitted in this clause 8. VoD Branded or Supplied Software licenses are transferable subject to VoD's prior written authorization and payment to VoD of any applicable fees or compliance with applicable third-party terms and as provided for in clause 6(c) of this section C. Upon transfer of the Software license, Customer's rights under the license will terminate and Customer will immediately deliver the Software and all copies to the transferee. As a condition of transfer, the transferee must agree in writing to these Terms and,



upon such agreement, the transferee will be considered the "Customer" for purposes of these Terms. Customer may transfer firmware only upon transfer of the associated Hardware.

## **9. Confidentiality.**

Customer must protect and secure the confidentiality and integrity of the Software License, user names and passwords and must notify VoD of any unauthorised use or disclosure, whether real or suspected, of the License, user names and passwords as soon as Customer becomes aware of or suspects any such use or disclosure.

## **10. Compliance.**

Customer agrees that VoD may audit Customer's compliance with Software license terms. Any such audit will require reasonable notice, will be performed during normal business hours and will be at VoD's expense; however, if an audit reveals unauthorised Use, Customer will immediately pay VoD the additional License fees for such Use together with the costs reasonably incurred by VoD in connection with the audit and enforcement of this clause 10.

## **11. Software Warranty.**

VoD Branded Software will materially conform to Specifications. If a warranty period is not specified for VoD Branded Software, the warranty period will be ninety (90) days from the delivery date.

## **12. Virus Warranty.**

VoD warrants that any physical media containing VoD Branded or Supplied Software will be shipped free of viruses, but no further virus protection is offered by VoD. It is Customer's responsibility to install its own virus protection and no liability will be accepted by VoD in connection with such virus protection or absence thereof.

## **13. Operation.**

VoD does not warrant that the operation of Software will be uninterrupted or error free, or that Software will operate in Hardware and Software combinations other than as expressly specified by VoD in the Specifications, or that Software will meet requirements specified by Customer.

## **14. Exclusive remedies.**

If notified of a valid warranty claim during the warranty period, VoD will correct the warranty defect for VoD Branded or Supplied Software, or replace such Software. Customer will pay expenses for return of such Software to VoD. VoD will pay expenses for shipment of repaired or replacement Software to Customer. VoD's entire liability for Software warranty claims is limited to that provided for in this clause 14.

## **15. Freeware and open source.**

Notwithstanding anything else contained in these Terms, Software licensed without fee or charge (also referred to as Freeware and/or Open Source) is provided "AS IS" without any warranties or indemnities of any kind.

## **16. Subscriptions.**

Some parts of the Service or Software are billed on a subscription basis ("Subscription(s)") (Subscription Licenses). These services are billed in advance on a recurring basis, once the product is registered and in service. Subscription licenses will be billed for a minimum period of three (3) months and can be cancelled at any time subject to a three (3) month cancellation notice period.



## D. SUPPORT TERMS AND CONDITIONS

### 1. Support services

- a) **Description of Support.** VoD will deliver Support according to the description of the services, eligibility requirements, service limitations and Customer responsibilities described in the relevant Transaction Documents.
- b) **Support Orders.** Customer may order Support:
  - 1) at the time of or after Product purchase, or prior to Product installation for,
    - a fixed term, or
    - an initial term which is automatically renewed on its expiry unless cancelled by Customer on not less than sixty (60) days written notice prior to the expiry of the preceding term.
  - 2) on a per-event basis; or
  - 3) at any time, when agreed non-standard Support has been offered by VoD to Customer according to a Statement of Work or as otherwise agreed.
- c) **Renewals.** Where Support for an automatically renewing term is ordered, the price for such Support will escalate on each renewal anniversary at the CPIX rate compounded annually unless otherwise indicated in Transaction Documents.
- d) **Cancellation.** Unless otherwise stated in a Transaction Document. VoD may discontinue Support for Products and specific Support services no longer included in VoD's Support offering upon **ninety (90) days** written notice.
- e) **Support Reinstatement.** If Customer allows Support to lapse, VoD may charge Customer additional fees to reinstate Support or require Customer to perform certain Hardware or Software upgrades. VoD will review and assess whether such fees will be charged at the time of the request to reinstate Support.
- f) **Local Availability.** Some Support, features, and coverage (and related Products) may not be available in all countries or areas.
- g) **Support Warranty.** VoD warrants that it will perform Support using generally recognized practices and standards.
- h) **Exclusive Remedies.** Support not performed in accordance with the warranty set out in clause g, will be re-performed. VoD's entire liability for Support warranty claims is limited to that provided for in this clause h.

### 2. Pricing services, availability, and invoicing

- a) **Pricing.** Except for prepaid Support or as otherwise stated in a Transaction Document, VoD may change Support prices upon **ninety (90) days** written notice. The cost of consumables and replacement parts referred to in clauses 8(c) and 8(d) of this section D are payable by Customer unless otherwise indicated in a Transaction Document.
- b) **Additional Services.** Additional services performed by VoD at Customer's request that are not included in a Transaction Document will be charged and payable at the then current applicable service rates for the country where the service is performed. Such additional services include but are not limited to:
  - 1) Customer requests for Support after VoD's local standard business hours (unless Customer has specifically purchased after-hours coverage for the requested Support);
  - 2) Customer requests for repair for damage or failure attributable to the causes specified in clause 6.d of section A of these Terms;
  - 3) Customer requests for Support where Customer does not, in VoD's reasonable determination, meet the applicable prerequisites and eligibility requirements for Support.
- c) **Local Availability.** Support outside of the applicable VoD coverage areas may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.



### 3. Site and product access

Customer will provide VoD access to the Products covered under Support; adequate working space and facilities within a reasonable distance of the Products; access to and use of information, customer resources, and facilities as reasonably determined necessary by VoD to service the Products; and other access requirements described in the relevant Transaction Document. If Customer fails to provide such access resulting in VoD's inability to provide Support, VoD will be entitled to charge Customer for the Support call at VoD's then current service rates. Customer is responsible for removing any Products ineligible for Support to allow VoD to perform Support. If delivery of Support is made more difficult because of ineligible Products, VoD will charge Customer for the extra work at VoD's then current service rates.

### 4. Standard support product eligibility

- a) **Minimum Configuration for Support.** Customer must purchase the same level of Support and for the same coverage period for all Products within a minimum supportable system unit (i.e. all components within a server, storage, or network device) to allow for proper execution of standalone and operating system diagnostics for the configuration.
- b) **Eligibility.** For initial and on-going Support eligibility, Customer must maintain all Products and associated Hardware and Software at the latest VoD specified configuration and revision levels and in what, in VoD's reasonable opinion, constitutes good operating condition.
- c) **Modifications.** Customer will allow VoD at VoD's request, at no additional charge to Customer, to modify Products to improve operation, supportability and reliability or to meet legal requirements.
- d) **Loan Units.** Loan units provided to Customer as part of Support or warranty services are and remain the sole and exclusive property of VoD, but Customer will bear the risk of loss or damage to such units on delivery thereof. Such units will be returned to VoD without lien or encumbrance at the end of the loan period, in a condition equal to when it was delivered or installed.
- e) **Relocation.** Customer is responsible for moving Products and bears all of the risks and expenses associated with moving them. If Customer moves the Products to a new location, VoD may charge additional Support fees and modify the response times, and Customer may be required to execute amended or new Transaction Documents. If Customer moves Products to another country, Support will be subject to availability in the destination country. Reasonable advance notice to VoD may be required to begin Support for some Products after relocation.
- f) **Maximum Use Limitations.** Certain Products have a maximum usage limit which is set out in the manufacturer's operating manual or technical data sheet. Customer must operate such Products within the maximum usage limit.
- g) **Multi-Vendor Support.** VoD provides Support for certain non-VoD Branded Products. The relevant Transaction Document will specify availability and coverage levels and govern delivery of multi-vendor Support whether or not the non-VoD Branded Products are under warranty. VoD may discontinue Support of non-VoD Branded Products if the manufacturer or licensor ceases to provide support for such Products.

### 5. Proprietary service tools

VoD may require Customer to use certain system and network diagnostic and maintenance programs ("Proprietary Service Tools") for delivery of Support under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property of VoD, are provided "AS IS," and include, but are not limited to remote fault management software and network Support tools. Proprietary Service Tools may reside on the Customer's systems or sites. Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by VoD. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service Tools or allow VoD to remove these Proprietary Service Tools. Customer will also be required to:



- a) allow VoD to keep the Proprietary Service Tools resident on Customer's systems or sites, and assist VoD in running them;
- b) install Proprietary Service Tools, including installation of any required updates and patches;
- c) use the electronic data transfer capability to inform VoD of events identified by the Software;
- d) if required, purchase VoD specified remote connection Hardware for systems with remote diagnosis service; and
- e) provide remote connectivity through a VoD approved communications line.

## 6. Customer responsibilities

- a) **Data Backup.** To reconstruct lost or altered Customer files, data or programs Customer must maintain a separate backup system or procedure that is not dependent on the Products under Support.
- b) **Temporary Workarounds.** Customer will implement temporary procedures or workarounds provided by VoD while VoD works on permanent solutions.
- c) **Hazardous Environment.** Customer will notify VoD if Customer uses Products in an environment that poses a potential health or safety hazard to VoD employees or subcontractors. VoD may require Customer to maintain such Products under VoD supervision and may postpone service until Customer remedies such hazards.
- d) **Authorized Representative/Primary Contact Person.** Customer will have a representative present when VoD provides Support at Customer's site. Customer must appoint a primary contact person to interface with VoD for Support and promptly notify VoD of any change of contact person identity.
- e) **Product List.** Customer will create and maintain a list of all Products under Support including the location of the Products, serial numbers, the VoD designated system identifiers and coverage levels. Customer will keep the list updated during the applicable Support period.
- f) **Documentation.** If a Customer purchase a Support offering that includes documentation updates, Customer may copy such updates only for systems under coverage. Copies must include appropriate VoD trademark and copyright notices.
- g) **Errors/Defects.** Customer must notify VoD of any errors or defects promptly and, at VoD's request, document such errors or defects by providing a list thereof and any other data relevant to enable VoD to remedy such errors or defects. Customer must implement such remedial action as is reasonably requested by VoD.
- h) **Troubleshooting.** Customer must provide remote access services for troubleshooting.
- i) **Enticement of Staff.** Customer will not during any period of Support and for twelve (12) months thereafter, directly or indirectly, entice, persuade or attempt to persuade any VoD employee to leave VoD's employ to work for Customer as employee, consultant or in any other capacity.

## 7. Supported software

Customer may purchase available Support for VoD Branded or supplied Software only if Customer is able to provide evidence it has rightfully acquired an appropriate VoD license for such Software. VoD will be under no obligation to provide Support due to any alterations or modifications to the Software not authorized by VoD or for Software for which Customer cannot provide sufficient proof of a valid license. Unless otherwise agreed by VoD, VoD will only provide Support for the current Version and the immediately preceding Version of VoD Branded Software, and then only when VoD Branded Software is used with Hardware or Software included in VoD specified configurations at the specified Version level.

## 8. Accessories and parts and miscellaneous

- a) **Compatible Cables and Connectors.** Customer will connect Products covered under Support with cables or connectors (including fibre optics if applicable) that are compatible with the system, according to the manufacturer's operating manual.



- b) **Support for Accessories.** VoD may provide Support for cables, connectors, interfaces and other accessories if Customer purchases Support for such accessories at the same Hardware service level purchased for the Products with which they are used.
- c) **Consumables.** Support does not include the delivery, return, replacement or installation of supplies or other consumable items (including, but not limited to operating supplies, magnetic media, print heads, ribbons, toner and batteries) unless otherwise stated in a Transaction Document.
- d) **Replacement Parts.** Parts provided under Support may be whole unit replacements or be new or functionally equivalent to new in performance and reliability and warranted as new.
- e) **Service Providers.** VoD reserves the right and Customer agrees to VoD's use of VoD authorized service providers to assist in the provision of Support.

## 9. Access to VoD's Customer Service Centre

- a) **Designated Callers.** Customer will identify a reasonable number of callers, as determined by VoD and Customer ("Designated Callers"), who may access VoD's Customer Service Centre.
- b) **Qualifications.** Designated Callers must be knowledgeable, certification trained and demonstrate technical aptitude in system administration, system management and, if applicable, network administration and management and diagnostic testing. VoD may review and discuss with Customer any Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Customer Service Centre that, in VoD's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, Customer may be required to replace that Designated Caller. All Designated Callers must have the proper system identifier as provided in the Transaction Documents or by VoD when Support is initiated. VoD's Customer Service Centre may provide support in English or in the local language(s) of Customer, or both.
- c) **Telecommunication Charges.** Customer will pay for all telecommunication charges associated with using VoD's Customer Service Centre, installing and maintaining ISDN links and Internet connections (or VoD approved alternatives) to the VoD Customer Service Centre, or using the Proprietary Service Tools.

## PLEASE COMPLETE AND SIGN

I, the undersigned, on behalf of (Please print full legal entity name)

\_\_\_\_\_  
(herein referred to as "The Customer")

Accept the attached Standard Terms and Conditions of Agreement of VoD Communications Solutions cc and confirm that the same govern all contract between the Customer and VoD Communications Solutions (Pty) Ltd. The Customer and I furthermore warrant that the information set out above is true and correct. On behalf of the Customer I hereby acknowledge that the Customer has read and understood each and every term of the Standard Conditions of Agreement and accepts the same as binding on the Customer.

Thus, done and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

As witnesses:

1. \_\_\_\_\_  
Print Name Signature of Director/Member





## **SCHEDULE 1 – PRICELISTS, QUOTATIONS AND OPPORTUNITY MANAGEMENT**

### **1 Pricelists**

VoD may release price lists, for a period no longer than one calendar month, for certain products, subject to the availability of such pricelists from the OEM's or standard pricing for products and services.

Pricelists are available for selected products to authorised reseller partners on request.

### **2 Quotations**

**Validity** – Standard validity period for quotes are 14 days. All Purchase Orders received for quotes older than 14 days, would be subject to a new quotation.

**Rate of Exchange (ROE)** – The Rate of Exchange are applied at the spot rate averaged over 109 days. VoD reserves the right to re-quote should the exchange rate deviate by more than 2%.

**Discounts** - Discounts applied are subject to Vendor approval confirmation.

### **3 Purchase Orders**

Purchase Orders are unconfirmed unless accepted and acknowledged by an authorised VOD customer services representative. ROE, availability and delivery date estimates must be confirmed prior to placing an order. No "date conditional" Purchase Orders will be accepted.

### **4 Opportunity Management**

The VoD sales team are available to assist remotely or at customer sites, with the reseller partner, to present the product presentations and to accurately scope the design and architecture of the solution.

Deal Registration are governed by this Standard Terms. Deal registration is valid for a fixed period subject to negotiated terms of sale and set deal milestones as agreed, with the purpose of mitigating channel conflict and does not necessary grant the reseller additional discount.

Deal Registration with the OEM, is subject to the Partnership Program.

## SCHEDULE 2 - SERVICE SPECIFICATION

### 1 Priorities:

Subject to Service Level Agreements, Software Assurance, Warranty and OEM Support Services the following Service Priorities will apply:

Priority	Severity	Description	Criteria
<b>P1</b>	Fatal	End-user's production system is down and completely inoperable.	The systems, products and components are not operable anymore and key functions and features do not work. No workaround or temporary repair is available.
<b>P2</b>	Major	End-user's production system is working but it is severely restricted. Major functions and features may have failed.	Some of the key functions and features of the systems, products and components are not fully operable, or limited operation is possible. No workaround or temporary repair is available.
<b>P3</b>	Minor	Minor impact on end-user's production system. Minor functions and features have failed.	No core operational information is lost and all core functions and features are operational. There may be some minor errors or restrictions. A workaround is available by changing set-up or working procedures.
<b>P4</b>	Miscellaneous	No impact on the end-user's production system. Cosmetic problem.	The system is working without limitations although some limitations may exist. The Customer requires some information on the capabilities, installation or configuration of the systems and components or requires new functionality.

## 2 Service Definitions

Subject to Service Level Agreements, Software Assurance, Warranty and OEM Support Services the following definitions will apply:

Levels	Description	Roles and Responsibility
Software Assurance	Software Assurance include assistance from the OEM should the system or solution not meet the specification as documented and sold. These services also isolate, replicate and resolve complex technical issues that may come up in operations, engage the OEM product development for bug fixes when needed, and provide access to software releases to stay current. New versions may include the benefit of any new features that may be included.	VOD to provide 3rd level remote support to the <b>CUSTOMER</b> .  (VOD and OEM to provide software to the <b>CUSTOMER</b> only. Installation will be an additional charge according to the agreed Transaction Document.
1 <sup>st</sup> Level Support	Support at the <b>CUSTOMER</b> site, replacing fuses, cleaning dust filters, creating users, assigning user rights, performing all backups (Database and System Configuration), performing system health checks etc. (ensuring that the equipment is operating correctly, dealing with customer or user questions).	<b>CUSTOMER</b> Information Technology Team (Primary Site Contact)
2 <sup>nd</sup> Level Support	Support at the <b>CUSTOMER</b> site on a call out basis, replacing faulty hardware, installing new software and service pack, extracting event log files, etc. (ensuring that the equipment is operational in the quickest time after failure, troubleshooting and problem resolution).	VOD or <b>CUSTOMER</b> field support teams subject to the cover agreed to within a Service Level Agreement or Partnership Agreement.
3 <sup>rd</sup> Level Support	Remote support only at the VOD premises, provided by the VOD Product Specialist division, repairing returned faulty hardware, assisting with technical queries, assisting remotely with on-site diagnostics, analysing event log files (telephone and e-mail technical support assistance to the <b>CUSTOMER</b> in their quest to ensure continued operation and availability of the VOD equipment, dealing with product or documentation errors that do not require code changes).	VOD and OEM Product Specialists Technical Teams
4 <sup>th</sup> Level Support	Remote support only at the VOD premises, provided either by the OEM or by VOD Development division, for VOD developed software, fixing software bugs and failures (escalation to development by the VOD Product Specialists, dealing with product or documentation errors that require code changes).	VOD Development Support Technical Teams or OEM Development and Support Teams

## 3 Case logging conditions:

### 1. VOD is committed to provide support, fixes and escalation to OEM's for design defects affecting service provision under the following conditions:

- The problem was reported to the VOD Customer Service Centre.
- A case is created in the VOD problem tracking database and the supporting information is available in terms of an accurate problem description.
- The problem was escalated to VOD timeously.
- Remote Access to the system is provided and relevant log files can be extracted.
- The problem was diagnosed as a Software or Hardware defect and it is absolutely reproducible (not intermittent).
- The defect does not exist in any 3<sup>rd</sup> party hardware or software.

### SCHEDULE 3 - SERVICE REQUEST AND CASE LOGGING PROCEDURE

For Service Requests or to log a Case at our Customer Service Centre by telephone or e-mail, the following procedure would need to be followed:

For assistance, call or e-mail:	<p>Phone Number: +27 12 643 1550</p> <p>e-mail: <a href="mailto:support@vodcs.co.za">support@vodcs.co.za</a></p>
Our Customer Service Centre will:	Capture any system problems, service requests or general user or product queries and provide you with a reference number for future follow up queries.
Our Customer Service Centre will attempt to resolve:	Any system problems, service requests or general user or product queries.
Our Customer Service Centre will be available between:	<p>Our Customer Service Centre is available between the hours of 08:00 and 17H00 CAT, Monday to Friday, excluding South African public holidays.</p> <p>After hour calls reaching the Customer Service Centre shall automatically be routed to either a voice mailbox or the technician on duty. E-mail correspondence shall only be attended to during the times specified above, unless discussed with the technician on duty.</p>
When you have reached our Customer Service Centre by phone, you will be asked for, or you should include the following information in the body of your e-mail:	<ul style="list-style-type: none"> <li>• Your name</li> <li>• Your contact telephone numbers</li> <li>• Your company name</li> <li>• The type of system and system serial number</li> <li>• A detailed description of the query, service request or problem, in the case of a faulty system.</li> </ul>
You should:	Record the time and the reference number allocated to you for any future follow up queries
To query progress:	Please contact our Customer Service Centre and quote the reference number you were provided and ask for a progress report.

#### SCHEDULE 4- ESCALATION TIMES AND CONTACT DETAILS

Should you be unsatisfied with any level of service and response received from **VOD**, you may escalate the case as follows.

In all escalations, the relevant reference number(s) should be quoted.

##### Escalation times:

Elapsed time (In Business Hours, after Response Time)	Priority 1	Priority 2	Priority 3
>4 hours	Customer Service Centre		
>8 hours	Service Manager	Customer Service Centre	
>12 hours	Managing Director	Service Manager	Customer Service Centre
>24 hours		Managing Director	Service Manager

Contact details for escalations.

##### VOD CONTACT DETAILS:

Customer Service Centre	Telephone number	:	+27 12 643 1550
	Name	:	Teuns Moolman
	e-mail:	:	<a href="mailto:support@vodcs.co.za">support@vodcs.co.za</a>
Technical Manager	Telephone number	:	+27 12 643 1550
	Name	:	David Grobler
	e-mail:	:	<a href="mailto:david@vodcs.co.za">david@vodcs.co.za</a>
Managing Director	Telephone number	:	+27 12 643 1550
	Name	:	Hanro Wentzel
	e-mail	:	<a href="mailto:hanro@vodcs.co.za">hanro@vodcs.co.za</a>