

We are **VUCITY LIMITED** ("**VUCITY**") a company incorporated in England and Wales with registered number 09903428 whose registered office is at Brigham House, 93 High Street, Biggleswade, SG18 0LD; and **You** are the Customer as identified in the Order Confirmation (the "**Customer**").

This agreement is formed of and incorporates the Order Confirmation and the Conditions and, where applicable, the Bespoke Model Addendum (the "**Agreement**").

VUCITY is the sole licensor of the VU.CITY Product and the SiteSolve Software. The Customer wishes to take a licence of (or to have access to the cloud version of) certain Model(s) within the VU.CITY Product and/or to take a licence of the SiteSolve Software, as detailed in the Order Confirmation, on the terms of this Agreement. In relation to the VU.CITY product, where the Customer engages VUCITY to create a Bespoke Model, as detailed in the Order Confirmation, the terms of the Bespoke Model Addendum shall apply.

**IT IS AGREED** as follows:

## 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall, unless the context otherwise requires, have the following meanings:

**"Bespoke Model"** means the Model created by VUCITY at the request of the Customer in accordance with the Bespoke Model Addendum;

**"Bespoke Model Addendum"** means the addendum attached hereto, which shall apply in accordance with its terms;

**"Bespoke Model Fee"** means the one-off fee payable for the creation by VUCITY of the Bespoke Model in accordance with the terms of the Bespoke Model Addendum, as set out in the Order Confirmation;

**"Bespoke Model Maintenance Fee"** means the fee payable for the maintenance of the Bespoke Model, as set out in the Order Confirmation;

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**"Cloud Product"** means the cloud-hosted version of the VU.CITY Product;

**"Commencement Date"** means the date on which the Order Confirmation is sent by VUCITY to the Customer;

**"Conditions"** means the terms and conditions set out in this document, other than the terms of the Bespoke Model Addendum;

**"Confidential Information"** means all confidential information and trade secrets (whether in writing or otherwise and no matter in what form or on what medium held) relating to either Party's business and activities including but not limited to drawings, diagrams, specifications, data, know-how, processes, ideas, concepts, and technology and all financial, marketing and technical information;

**"Fee"** means the fee for the licence of or access to the Product, as set out in the Order Confirmation;

**"Force Majeure"** in relation to either Party, means any circumstances beyond the reasonable control of that Party including, without prejudice to the generality of the foregoing, any failure of a utility service or transport or telecommunication network, act of God, war, riot, civil commotion, malicious damage, accident, breakdown or plant or machinery, default of suppliers or sub-suppliers, fire, explosion, flood, adverse weather, epidemic, or other natural physical disaster, strike, lockout or other form of industrial action (other than a strike, lock-out, or other form of industrial action on the part of employees of the Customer) or any form of government or supra-national authority intervention;

**"Imported Data"** means buildings, numerical data, and layers that are provided or uploaded to the Product by the

Customer;

**"Initial Term"** means the licence or subscription term as set out in the Order Confirmation;

**"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar and equivalent rights or forms of protection which subsist or will subsist, now or in the future in any part of the world;

**"Model"** means a defined section of computer-generated 3D geometry within the VU.CITY Product, representing a geographical location, which may include but shall not necessarily be limited to a city, town or a building;

**"Normal Business Hours"** means 9am to 5pm local UK time, each Business Day;

**"On-Premise Product"** means the on-premise version of the VU.CITY Product or the SiteSolve Software;

**"Order Confirmation"** the written confirmation or order form sent by VUCITY to the Customer setting out details of the Customer's order and subscription, and which forms part of this Agreement;

**"Party"** or **"Parties"** means a party or the parties to this Agreement;

**"Product"** means the Model(s) within the VU.CITY Product selected by the Customer and/or the SiteSolve Software (as relevant), as set out in the Order Confirmation, and any Updates in accordance with this Agreement, either provided on an on-premise or cloud basis;

**"Renewal Term"** as defined in clause 8.2;

**"SiteSolve Software"** means the software licensed by VUCITY known as SiteSolve, available to purchase and download as a desktop applicable via the Website;

**"Term"** means the Initial Term and any Renewal Terms together;

**"Termination Date"** means the date upon which this Agreement expires or is terminated;

**"Third Party Cloud Provider"** means the third party that hosts the Cloud Product and/or the VuCity Drive, as set out in the Order Form or as notified by VUCITY to the Customer from time to time;

**"Trade Marks"** means the trade marks "**VUCITY**" and "**Vertex**" and "**Vertex Modeling**", and any other registered trade mark owned by or licensed to VUCITY from time to time;

**"VU.CITY Product"** means the software licensed by VUCITY known as VU.CITY, available to purchase via the Website and downloadable as a desktop application or accessible as a cloud product;

**"Update"** means any update to the Product provided during the course of this Agreement by VUCITY to the Customer (either partial or total) whether relating to the area covered or the details included;

**"User"** means a named employee or worker of the Customer who is authorised by VUCITY to use the Product, and who (in relation to the VU.CITY Product only) has been allocated the relevant user rights in relation to the applicable user tiers set out on the Website and detailed in the Order Confirmation;

**"Website"** means VUCITY's website, being [www.vu.city](http://www.vu.city);

**"Year"** means any period of one year commencing on the Commencement Date or on any anniversary thereof.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

## 2 ACCEPTANCE

- 2.1 The Customer accepts the terms of this Agreement by confirming its acceptance on the Website or in writing to VUCITY, or where no express acceptance is given, by using the Product.
- 2.2 If you are an individual accepting the Agreement on behalf of an entity, you represent that you have the legal authority to enter into this Agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with the purchase or renewal of the Product, that entity will be treated as the owner of the subscription for purposes of this Agreement.
- 2.3 VUCITY provides the VU.CITY Product on the basis of the Customer having access to specific Models, with different tiers of User having different rights in relation to the Product's functionality. In submitting its order for the VU.CITY Product, the Customer will have selected the Models to which it will have access and the number of Users per tier. In doing so, and completing the order process, the Customer accepts its configuration of the VU.CITY Product, which shall be detailed in the Order Confirmation.

## 3 GRANT OF RIGHTS

- 3.1 Where the Customer procures the On-Premise Product, in consideration of the Fee paid by the Customer, VUCITY hereby grants to the Customer on the terms set out in this Agreement with effect from the Commencement Date a non-exclusive, non-transferable licence for the Customer to use the Product solely for any usual activity in its role as a public sector body on the basis set out in clauses 3.2 – 3.4.

Where the Customer procures the Cloud Product, in consideration of the Fee paid by the Customer, VUCITY hereby grants to the Customer on the terms set out in this Agreement with effect from the Commencement Date a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Users to use the Product during the Term solely in connection with any usual activity in the Customer's role as a public sector body on the basis set out in clauses 3.2 – 3.4.

- 3.2 In relation to the VU.CITY Product only:
- 3.2.1 the rights granted in clause 3.1 above permits the use of the VU.CITY Product by the Users, as updated from time to time as per clause 5, in accordance with the rights allocated to such tier of User set out on the Website from time to time;
- 3.2.2 the Customer can subscribe to the use of Models as an organisation, and the Users' ability to access and their functionality in relation to the Models shall be dependent on the User tier; and
- 3.2.3 only Users with the relevant access rights based on their applicable User tier shall be permitted to use the VU.CITY Product to produce still and moving images which can be used under licence for the same purposes as set out in clause 3.3.
- 3.3 The Product shall only be used by the Users, to whom a username and password has been issued and only for the

duration that they remain an employee or worker of the Customer.

- 3.4 The Customer shall put in place appropriate technical and organisational measures to prevent unauthorised access.
- 3.5 VUCITY shall on the Commencement Date provide the Customer with an administrative login enabling them to manage the usernames for all Users of the Product, together with instructions on how to use the Product.
- 3.6 The Customer shall ensure that the number of Users of the Product does not exceed the number granted in the applicable Order Confirmation at any one time.
- 3.7 The Customer shall ensure that all Users use the Product in accordance with the terms of this Agreement.
- 3.8 Subject to clause 3.9, the Customer shall ensure that the issued usernames shall not be used by anyone other than the User to whom they were issued. If VUCITY discovers during or as a result of an audit under clause 10 or has reason to believe that usernames have been shared otherwise than as permitted under clause 3.9, VUCITY reserves the right to charge the Customer for the actual number of Users that are using the Product during the relevant Term with such charges being applied retrospectively from the Commencement Date.
- 3.9 The Customer shall only be entitled to assign a User's account to another employee or worker within its organisation where the User is no longer an employee or worker within the Customer organisation or where the employee or worker has changed their job role where access to the Product is no longer required. Where VUCITY considers that the Customer is reassigning User accounts on a regular basis VUCITY reserves the right to carry out an audit of the Customer's use of the Product and User accounts and require prior written consent to any reassignment of User accounts.
- 3.10 VUCITY shall, at its own discretion, supply Updates to the Customer from time to time.
- 3.11 The copyright and all other proprietary rights whatsoever in the Product and all other materials provided to the Customer under this Agreement by VUCITY shall, as between the Customer and VUCITY, remain vested in VUCITY.

## 4 RESTRICTIONS

- 4.1 The Customer shall not and shall ensure that its Users shall not, unless expressly provided for elsewhere in this Agreement:
- 4.1.1 copy, rent, lease, sell, transfer, assign, or sublicense, the Product or any part of the Product;
- 4.1.2 disassemble, reverse engineer or decompile, create a derivative work of, modify or alter the Product or any part of the Product save as expressly permitted by law;
- 4.1.3 seek to extract all or any part of the data, information or source code held in the Product from the Product;
- 4.1.4 use the Product on behalf of, share the Product with, or permit the Product to be shared with, any third party, even where the third party is involved in the same scheme or development;
- 4.1.5 use the Product or permit the Product to be used by anyone other than the Users;
- 4.1.6 attempt or provide a means to extract, cache or otherwise store any content other than for what would reasonably be regarded as normal use including for data backup;
- 4.1.7 knowingly use the Product in any manner or for any purpose that violates any applicable law or regulation, or any right of any person including, but not limited to, Intellectual Property Rights, or privacy rights;
- 4.1.8 use still or moving images produced by the Product for anything other than the expressly set

- out in this Agreement;
- 4.1.9 contribute any still or moving images produced by the Product to photograph libraries accessible by third parties, including but not limited to online libraries;
- 4.1.10 use the Product:
- (a) to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes or other items of a destructive or deceptive nature;
  - (b) to interfere with the use of the Product, or the equipment used to access the Product by any other customer or authorised user;
  - (c) to disable, interfere with or circumvent any aspect of the Product;
  - (d) to generate, distribute or facilitate unsolicited mass emails, promotion, advertisements or other solicitations;
  - (e) to access any other VUCITY or third party product or service in a manner that violates the terms of use of such other product or service; or
  - (f) or any still or moving images produced from the Product, in any way that is outside the scope of the rights granted in this Agreement.
- 4.2 When the Customer uses images rendered by the Product, they must be accompanied by an acknowledgement of VUCITY's rights using wording "Produced under licence by VU.CITY" or such other similar wording as is contained within Product itself.
- 5 FEE AND PAYMENT**
- 5.1 In consideration for the rights granted to it under this Agreement, the Customer shall pay to VUCITY the Fee, which shall be calculated:
- 5.1.1 in relation to the VU.CITY Product, on the basis of the number of Users per tier and the Model(s) selected by the Customer; and
  - 5.1.2 in relation to the SiteSolve Product, on the basis of the number of Users,
- as set out in the Order Confirmation. The Fee is to be paid in pounds sterling (£) and is exclusive of any VAT, duties, bank fees, sales tax, or excise or similar or other taxes due.
- 5.2 If the Customer wishes to add additional Users, the Customer shall purchase additional User subscriptions on the Website for the fees set out on the Website. Where additional Users cannot be purchased through the Website, the Customer may add additional Users during the term of the Agreement by notifying VUCITY and subject to an additional Order Confirmation.
- 5.3 Where the Customer procures a licence or access to the VU.CITY Product and the Customer wishes to gain access to additional Models, the Customer shall subscribe to the additional Models on the Website for the fees set out on the Website. Where additional Models cannot be purchased through the Website, the Customer may add such Models during the term of the Agreement by notifying VUCITY and subject to an additional Order Confirmation.
- 5.4 The Customer shall not be entitled by reason of any set-off, counterclaim, abatement or other similar deduction to withhold payment of any amount due to VUCITY.
- 5.5 Where the Customer orders the Product (or additional Models or Users) via the Website, the Customer shall pay the Fees at the point of ordering. Unless this Agreement has been terminated in accordance with clause 8, the Customer shall pay the Fees for the Renewal Term on the anniversary of the Commencement Date.
- Where the Customer orders the Product (or additional Models or Users) otherwise than via the Website, VUCITY shall invoice the Customer for the Fee on or around the Commencement Date (or on or around the date the
- additional Models or Users are ordered). Unless this Agreement has been terminated in accordance with clause 8, VUCITY shall invoice the Customer the Fees for the Renewal Term on or around each anniversary of the Commencement Date.
- 5.6 The Customer shall pay undisputed invoices within 30 days of the date of the invoice.
- 5.7 VUCITY shall be entitled to charge the Customer interest on all overdue payments at a rate of 2% per month, compounded monthly, on the outstanding balance.
- 5.8 If the Customer fails to comply with clause 5.6, VUCITY reserves the right to terminate this Agreement in accordance with clause 8 below.
- 5.9 VUCITY reserves the right to increase the Fee for any Renewal Term. Should VUCITY wish to increase the Fee for the Renewal Term, it shall notify the Customer no less than 30 days before the end of the Initial Term or the relevant Renewal Term.
- 6 ADDITIONS TO THE PRODUCT**
- 6.1 The Customer may, subject to clause 11, provide or upload Imported Data to the Product. The Customer will retain ownership of all intellectual property rights in the Imported Data.
- 6.2 The Customer may request that VUCITY incorporates additional data into the Product. The Customer will send to VUCITY in writing a description of the data it wishes to be included, together with the details of availability of the data if known. VUCITY will consider the request of the Customer in its sole discretion. Any such additions to the Product will be subject to the payment of additional fees made known to the Customer in advance and may be subject to additional terms and conditions which will be made available to the Customer on receipt of such request.
- 6.3 The Customer may purchase from VUCITY a licence to particular Model(s) to be incorporated into the SiteSolve Software. Such licence shall be subject to the Customer entering into applicable licence terms and conditions, as required by VUCITY.
- 7 CLOUD SERVICES**
- 7.1 Subject to the remaining provisions of this clause 7, where the Customer licenses the On-Premise Product, the Customer shall be entitled to store projects, imported models and other images and data on the VuCity cloud storage drive (the "VuCity Drive"), in connection with its use of the Product at no extra cost to the Customer, subject to any storage limit imposed by VUCITY from time to time in its sole discretion.
- 7.2 The VuCity Drive and the Cloud Product use cloud services provided by a Third Party Cloud Provider and the Customer's use of the VuCity Drive and the Cloud Product is subject to its acceptance of, and compliance with, the Acceptable Use Policy that the Third Party Cloud Provider has in place from time to time (the link to which is provided in the Order Form) as if the Customer were the "Customer" (or equivalently defined party) identified therein.
- 7.3 VUCITY reserves the right to update or modify the VuCity Drive and Cloud Product and/or the provisions of this clause 7 from time to time in line with any updates or modifications made by the Third Party Cloud Provider in respect of the services provided by the Third Party Cloud Provider and/or its Terms of Service (as identified in the Order Confirmation).
- 7.4 The Customer shall not, and shall procure that its Users shall not:
- 7.4.1 copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the VuCity Drive and the Cloud Product;
  - 7.4.2 use the VuCity Drive or the Cloud Product for any activity that may lead to death, personal injury, or environmental damage (such as operation of

- nuclear facilities, air traffic control, life support systems, or weaponry);
- 7.4.3 sublicense, resell or distribute any or all of the VuCity Drive or the Cloud Product; or
- 7.4.4 process or store any data within the VuCity Drive or the Cloud Product, which subject to the International Traffic in Arms Regulations maintained by the US Department of State.
- 7.5 VUCITY provides no warranties in respect of the operation, quality or fitness for purpose of the VuCity Drive and the Cloud Product and the Customer accepts that any such conditions or warranties implied by law are hereby excluded to the fullest extent permitted by law.
- 7.6 The Customer accepts that it is solely responsible for ensuring that any projects, imported models or other images and data that it uploads to the VuCity Drive or the Cloud Product are properly backed-up and the Customer agrees that VUCITY shall have no liability in respect of any loss, corruption or destruction of or any damage to any such projects, imported models or other images and data.
- 7.7 VUCITY reserves the right at its reasonable discretion, to suspend or terminate the Customer's right to use and access the VuCity Drive and the Cloud Product at any time with immediate effect and without liability to Customer.
- 8 DURATION, RENEWAL AND TERMINATION**
- 8.1 This Agreement and the licence or cloud subscription granted herein shall commence on the Commencement Date and shall continue in force for the Initial Term unless otherwise terminated in any of the circumstances of this clause.
- 8.2 Unless VUCITY or the Customer have served notice on the other pursuant to clause 8.4 and/or clause 8.5 as applicable, on expiry of the Initial Term, this Agreement shall automatically renew for a further period which is the same duration as the Initial Term ("**Renewal Term**") and any revised Fee shall apply during the Renewal Term in accordance with clause 5.9.
- 8.3 Each Party shall have the right to terminate this Agreement forthwith by notice in writing to the other Party in the event that the other Party shall materially fail to perform or observe any of the obligations on its part to be performed or observed under this Agreement (including non-payment of any sum due under or pursuant to this Agreement) PROVIDED THAT in a case where the breach is remediable such notice shall also require the Party in default to remedy such breach and if so remedied in 30 days of such notice being served such notice to terminate this Agreement shall be deemed void and of no effect.
- 8.4 VUCITY shall have the right to serve notice at any time that the licence or cloud subscription to the VU.CITY Product and/or SiteSolve Software shall not be available for renewal at the end of the Initial Term or a Renewal Term. Where such notice is served, the licence or cloud subscription (as relevant) will expire at the end of the Initial Term or relevant Renewal Term.
- 8.5 The Customer shall have the right to serve notice at least 7 days prior to the expiry of the Initial Term or relevant Renewal Term stating that the Customer does not wish to renew the licence or cloud subscription for the VU.CITY Product and/or SiteSolve Software. Where such notice is served, such licence or cloud subscription will expire at the end of the Initial Term or relevant Renewal Term.
- 8.6 Without prejudice to any other rights or remedies to which VUCITY is entitled, VUCITY may terminate this Agreement immediately without liability if:
- 8.6.1 the Customer shall present a petition or have a petition presented by a creditor for the Customer's winding up or the Customer enters into compulsory or voluntary liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or the Customer shall have a receiver of all or any of the Customer's undertakings or assets appointed,
- or the Customer shall be deemed by virtue of the applicable law to be unable to pay the Customer's debts or the Customer shall cease to carry on business;
- 8.6.2 the Customer suffers a change of control within the meaning of section 124 of the Corporation Tax Act 2010;
- 8.6.3 the Customer challenges or disputes the validity of any of VUCITY's Intellectual Property Rights or those vesting in the Product and used under licence by VUCITY; and
- 8.6.4 the Customer purports to assign any of its rights or obligations under this Agreement without the prior written consent of VUCITY.
- 9 CONSEQUENCES OF TERMINATION**
- 9.1 Expiry or termination of this Agreement, for any reason, shall, subject to the other provisions of this clause 9, be without prejudice to the rights and liabilities of either party which may have accrued on or at any time up to the date of termination.
- 9.2 Expiry or termination of this Agreement by VUCITY under clause 8 above shall be without prejudice to any claim which VUCITY may have against the Customer for any loss or damages (including, without limitation, consequential loss or damage) suffered by VUCITY as a result of the circumstances leading to the termination.
- 9.3 In the event of expiry or termination of this Agreement, the Customer undertakes that immediately upon the Termination Date, the Customer, the Users and any parties acting on the Customer's behalf shall:
- 9.3.1 cease using the Product; and
- 9.3.2 where the On-Premise Product is purchased, within 14 days delete and remove all copies and versions from its systems of the Product; and
- 9.3.3 on VUCITY's request, confirm to VUCITY in writing, signed by an officer of the Customer, that the Customer has complied with this clause 9.3,
- save that nothing in this clause shall prevent the Customer from continuing to use the images, still or moving, which were created in accordance with, and during the term of, this Agreement, provided that such use is in accordance with the purposes described in clause 3 and VUCITY's rights are acknowledged in accordance with clause 4.2.
- 10 AUDITING**
- The Customer shall allow VUCITY or VUCITY's authorised representatives or agents to have access to the Product via remote monitoring and the Customer's premises where the Product is used and have access to any records kept in relation to this Agreement, at all reasonable times for the purpose of inspecting the Customer's premises and systems in relation to this Agreement.
- 11 REPRESENTATIONS AND WARRANTIES**
- 11.1 Each Party represents and warrants to the other that it has the full power and authority to enter into this Agreement and to perform its obligations hereunder and to grant the rights set forth herein.
- 11.2 Each party further represents and warrants to the other that it is duly organised, validly existing and in good standing under the applicable laws, and that the execution, delivery and performance of this Agreement does not and shall not conflict with or violate any constitutional documents of such Party or the terms of any agreement between it and any third party.
- 11.3 The Customer acknowledges that the Product (including but not limited to each Model) is a computer-generated representation of a geographical location and whilst VUCITY has used reasonable endeavours to ensure the Product is accurate according to the level of accuracy stated on the Website in relation to the relevant Model, the Customer is not relying on the Product to make any decisions and the

- Customer must, itself, validate any plans, designs or outcomes from the Product. VUCITY shall not be held responsible for the Customer's use of or reliance on the Product.
- 11.4 VUCITY shall remedy promptly and at its own expense any material technical defects in the Product. The Customer's remedies under such warranty shall be limited to either correction or replacement of the Product at VUCITY's discretion. The Customer shall always afford VUCITY a reasonable opportunity to correct any technical defect in the Product at VUCITY's own expense before VUCITY is regarded as being in breach of its obligations under this clause.
- 11.5 The Customer accepts that this Agreement does not set out any warranty in respect of the Product other than clause 11.3 above and that save as expressly provided for in this Agreement, any condition or warranty implied by law as to the quality of and/or fitness for purpose and/or description of the Product, or the use of reasonable skill and care, or the description of the Product, is hereby excluded to the fullest extent permitted by law. For the avoidance of doubt, VUCITY gives no warranty except as expressly provided in clause 11.3 in respect of:
- 11.5.1 any failure of the Product to operate in whole or in part, which are attributable to any changes in the operating environment or in any operating system from those recommended and approved by VUCITY; or
- 11.5.2 any failure of the Product to meet the Customer's requirements or to operate in combination with any hardware or software which may be selected for use by the Customer, other than those recommended and approved by VUCITY.
- 11.6 It is the Customer's responsibility to ensure that the Product is suitable for the Customer's intended purpose and that the Customer has obtained any additional licences required to run the Product on the hardware and with any other software which is recommended by VUCITY. The Customer shall ensure that it has obtained any and all consents, licences and permissions in respect of all Imported Data. The Customer acknowledges and accepts that:
- 11.6.1 VUCITY has not produced the Product to meet the Customer's own specification or requirements;
- 11.6.2 the Product cannot be tested in every possible combination and operating environment and that it is not possible to produce economically (if at all) computer programs known to be error free or which operate in an uninterrupted manner and that not all errors are necessarily capable of rectification;
- 11.6.3 VUCITY is not responsible for nor makes any warranty in respect of any Imported Data nor does it warrant to the Customer that such Imported Data will operate with the Product.
- 11.7 In order to ensure that the Product is suitable, VUCITY may provide the Customer with access to the Product for a limited period of time. Details will be set out in the relevant Order Confirmation.
- 12 LIMITATION OF LIABILITY AND INDEMNITY**
- 12.1 Except as expressly stated in clause 12.2:
- 12.1.1 VUCITY shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming through or under the Customer), whether the same are suffered directly or indirectly or are immediate or consequential;
- 12.1.2 the total liability of VUCITY, whether in contract or tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract shall in no circumstances exceed a sum equal to the total of the Fee paid by the Customer to VUCITY during the 12 months immediately preceding the date on which the event(s) giving rise to such liability arose; and
- 12.1.3 the Customer agrees that, in entering in this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any such representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) VUCITY shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.
- 12.2 The exclusions in clause 12.1 shall apply to the fullest extent permissible at law, but VUCITY does not exclude liability for:
- 12.2.1 death or personal injury caused by the negligence of VUCITY, its officers, employees, contractors or agents;
- 12.2.2 fraud or fraudulent misrepresentation; or
- 12.2.3 any other liability which may not be excluded by law.
- 12.3 For the purpose of this clause 12, any number of acts or omissions whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as one act or omission.
- 12.4 Except in respect of liability which cannot be excluded by operation of law, the Parties shall be discharged of all liability in respect of any transaction subject to this Agreement, whether in contract, or in tort, including negligence unless suit is brought within 2 Years after the party bringing suit first becomes (or should reasonably have become) aware of the facts constituting the cause of action.
- 12.5 The Customer agrees that it will fully indemnify VUCITY in relation to any and all damages, losses, liabilities and costs (including but not limited to legal costs) arising from any third party claims or proceedings made or threatened against VUCITY arising out of the Customer's use of the Product and in respect of the Imported Data the Customer will either agree to be substituted as defendant in any proceedings or to be joined as co-defendant in any proceedings in place of VUCITY.
- 13 INTELLECTUAL PROPERTY RIGHTS**
- 13.1 The Customer acknowledges that the Product, and all Intellectual Property Rights, therein are either owned by VUCITY or obtained under licence granted to VUCITY, and that the Customer shall have no right in or to the Product other than the right to use it in accordance with the terms of this Agreement.
- 13.2 VUCITY undertakes at its own expense to defend the Customer or at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Product (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a reason of or in connection with any such Claim. For the avoidance of doubt, this clause shall not apply where the Claim in question is attributable to:
- 13.2.1 possession or use of the Product (or any part thereof) by the Customer other than in accordance with the terms of this Agreement;
- 13.2.2 use of the Product in combination with any hardware or software not supplied or specified by VUCITY if the infringement would have been avoided by the use of the Product not so combined; or
- 13.2.3 use of a non-current release of the Product;
- 13.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, VUCITY's obligations under clause 13.2 above are conditional on the Customer:

- 13.3.1 as soon as reasonably practicable, giving written notice of the Claim to VUCITY, specifying the nature of the Claim in reasonable detail;
  - 13.3.2 not making any admission or liability, agreement or compromise in relation to the Claim without prior written consent of VUCITY (such consent not to be unreasonably conditioned, withheld or delayed);
  - 13.3.3 giving VUCITY and its professional advisors access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents, and records within the control of the Customer, so as to enable VUCITY and its professional advisors to examine them and to take copies for the purpose of assessing the Claim; and
  - 13.3.4 subject to VUCITY providing security to the Customer, to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as VUCITY may reasonably request to avoid, dispute, compromise or defend the Claim.
- 13.4 If any Claim is made, or in VUCITY's opinion is likely to be made against the Customer, VUCITY may at its sole option and expense:
- 13.4.1 procure for the Customer the right to continue to use the Product or any part thereof in accordance with the terms of this Agreement;
  - 13.4.2 modify the Product so that it ceases to be infringing;
  - 13.4.3 replace the Product with a non-infringing product; or
  - 13.4.4 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Product to the date of termination) on return of the Product and all copies thereof,
- provided that if VUCITY modifies or replaces the Product, the modified or replacement Product must comply with the warranties contained clause 10 and the Customer shall have the same rights in respect thereof.
- 13.5 This clause 13 constitutes the Customer's exclusive remedy and VUCITY's only liability in respect of Claims.
- 13.6 The Customer acknowledges that VUCITY owns or has a licence to use and sublicense the Trade Marks. Any reputation or goodwill in the Trade Marks shall accrue to the respective owners of the trade marks. The Customer shall not use (other than in relation to the Product) nor seek to register any trade mark or trade name (including any company name) which is identical to or confusingly similar with, or incorporates the Trade Marks, or any other trade mark or trade name in which VUCITY claims rights anywhere in the world.

#### **14 CONFIDENTIALITY**

- 14.1 Each Party shall, and shall procure that its officers, employees and agents shall, preserve the confidentiality of all Confidential Information, and shall not disclose or cause or permit to be disclosed any Confidential Information to any person save:
- 14.1.1 to the extent that such disclosure is strictly to enable the Customer to perform or comply with any of its obligations under this Agreement; or
  - 14.1.2 to the extent that there is an irresistible legal requirement on the Customer to do so; or
  - 14.1.3 where the information has come into the public domain otherwise than through a breach of any of the terms of this Agreement.
- 14.2 Neither Party nor any of its officers, employees, or agents

shall be entitled to make use of any Confidential Information other than during the continuance of and pursuant to this Agreement and then only for the purpose of carrying out its obligations pursuant to this Agreement.

#### **15 ASSIGNMENT**

The Customer shall not be entitled to assign, transfer or novate the rights and obligations under this Agreement without the prior written consent of VUCITY, (which shall not be unreasonably withheld).

#### **16 FORCE MAJEURE**

- 16.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure resulting from any occurrence of an event of Force Majeure provided that this shall not relieve the Customer of any payment obligation where the occurrence or event consists of non-payment or late payment by a customer or otherwise consists of a shortage of funds.
- 16.2 Any event of Force Majeure shall be immediately notified by the Party affected thereby to the other. The affected Party shall use all reasonable endeavours to remedy the event or limit the effects of the said event of Force Majeure upon the other Party as quickly as possible.

#### **17 SEVERABILITY**

If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable such term or provision shall be deemed modified to the minimum extent necessary in the court's opinion to render such term or provision valid, legal and enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving the intent of the Parties in this Agreement.

#### **18 WAIVER**

No failure or delay by either Party to exercise any right or remedy under this Agreement shall constitute a waiver nor shall it prevent the further exercise of such right or remedy. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies by law.

#### **19 NOTICES**

- 19.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email. The relevant details of each Party shall be set out in the Order Confirmation.
- 19.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during Normal Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time the e-mail was sent on a Business Day.

#### **20 NO PARTNERSHIP**

Nothing in this Agreement is intended to establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

#### **21 DAMAGES ARE INSUFFICIENT COMPENSATION AND EQUITABLE REMEDIES ARE TO BE AVAILABLE**

Without prejudice to any other rights or remedies that VUCITY may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the Customer of the provisions of this Agreement

and that the remedies of injunction and specific performances as well as any other equitable relief for any threatened or actual breach of the provisions of this Agreement by the Customer would be more appropriate remedies.

## 22 ENTIRE AGREEMENT

22.1 This Agreement constitutes the entire agreement between the parties and supersedes any previous agreement between them, whether written or oral, relating to its subject matter.

22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

## 23 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

## 24 FREEDOM OF INFORMATION

24.1 In the event that the Customer receives a request in connection with the Freedom of Information Act 2000:

24.1.1 VUCITY will use reasonable endeavours to assist the Customer, at no additional charge and within such timescales as the Customer may reasonably specify, in meeting any requests for information in relation to this Agreement which are made to the Customer; and

24.1.2 the Customer will, wherever reasonably practical, consult with VUCITY before disclosing information which relates to VUCITY.

## 25 BRIBERY

VUCITY shall comply with the provisions of the Bribery Act 2010, and in particular section 7 thereof in relation to the conduct of its employees, or persons associated with it. Moreover, VUCITY warrants that at all times it shall have in place adequate procedures designed to prevent acts of bribery from being committed by its employees or persons associated with it and shall provide to the Customer at its request, within a reasonable time, proof of the existence and implementation of said procedures.

## 26 EQUAL OPPORTUNITIES

VUCITY will not unlawfully discriminate within the meaning and scope of the Equality Act 2010, or any other applicable equality legislation relating to age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnerships, pregnancy and maternity, including any statutory modification or re-enactment of statutes, statutory instruments, byelaws or equivalent European legislation relating to equal opportunities that may be in force or come into force during the term of this Agreement.

## 27 GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## 28 SET-OFF

Neither Party shall be entitled to set-off any amounts owing by it to the other Party under this Agreement against amounts owing to it by the other Party under any other agreement.

## 29 COMPLIANCE WITH LAWS AND REGULATIONS

Each Party shall observe and abide by and shall require its sub-contractors to observe and abide by all laws, regulations and by laws as may apply in relation to the matters contemplated by this Agreement. Neither Party shall do anything or omit to do anything which will cause the other to be in breach of any applicable laws or regulations which have been notified by the other Party.

## 30 VARIATION

No variation of this Agreement or any term of this Agreement shall be effective unless it is in writing signed by the Parties.

## 31 COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

## 32 DATA PROTECTION

32.1 In this clause 32, the terms "personal data", "processor", "process" and "controller" have the meanings given in the General Data Protection Regulation (EU) 2016/679 or any United Kingdom equivalent following the United Kingdom's exit from the European Union ("GDPR").

32.2 The Parties acknowledge that neither Party will act as a processor on behalf of the other Party in respect of any personal data processed by that Party in connection with this Agreement. If and to the extent that either Party acts as a processor on behalf of the other Party, the Parties will enter into a data processing agreement if required to comply with data protection legislation or associated regulatory guidance.

32.3 Each Party shall, in respect of any personal data that it processes as controller in connection with this Agreement, comply with the GDPR, the Data Protection Act 2018 and any replacement legislation.

## 33 CLOUD-SPECIFIC PROVISIONS

The following provisions apply where the Customer purchases a subscription to the Cloud Product only:

33.1 **Availability:** VUCITY shall use commercially reasonable endeavours to make the cloud Product available 24 hours a day, seven days a week, except for:

33.1.1 planned maintenance carried out outside of Normal Business Hours; and

33.1.2 unscheduled maintenance performed outside Normal Business Hours, provided that VUCITY has used reasonable endeavours to give the Customer at least reasonable notice in advance.

33.2 **Support:** VUCITY will, at no additional cost to the Customer, provide the Customer with telephone and email support within Normal Business Hours.

33.3 **Maximum usage:** the Customer shall procure that each User shall not spend more than 30 hours logged into the cloud Product per calendar month. In the event that the average usage per User of the Customer exceeds the combined total allowance per calendar month, VUCITY shall be entitled to invoice the Customer for the additional use, as if the additional use constituted an equivalent number of additional users for the purpose of the Order Form and clause 5.2 of this Agreement.

## BESPOKE MODEL ADDENDUM

### 1. APPLICABILITY

- 1.1. This Bespoke Model Addendum shall only apply to the extent that VUCITY is creating a Bespoke Model for the Customer, as detailed in the Order Confirmation.
- 1.2. The provisions of the Conditions shall continue to apply in relation to the licence of the Product. The terms of this Bespoke Model Addendum shall apply in relation to the creation of the Bespoke Model. Once created, the Bespoke Model shall form part of the Product and the Customer's licence/subscription, and subject to paragraph 1.3 below, the Conditions shall apply thereto.
- 1.3. Where this Bespoke Model Addendum applies and there is any conflict between its terms and the Conditions above, the Bespoke Model Addendum shall take priority.

### 2. SERVICES

- 2.1. In consideration for the Bespoke Model Fee, VUCITY shall create the Bespoke Model in accordance with the criteria agreed between the Parties.
- 2.2. Once created, the Customer shall be required to purchase a licence to use (where the Customer has the on premise version of the VU.CITY Product) or the right to access (where the cloud version of the VU.CITY Product) the Bespoke Model, which shall form part of the VU.CITY Product and the Customer's subscription for it, in accordance with, and subject to the restrictions set out in, clause 3 of the Conditions.

### 3. FEES AND PAYMENT.

- 3.1. In consideration of:
  - 3.1.1. creating the Bespoke Model, the Customer shall pay to VUCITY the Bespoke Model Fee, within 30 days of receiving an invoice for the same. VUCITY shall invoice the Customer for the Bespoke Model Fee on or after the Customer's order for the Bespoke Model; and
  - 3.1.2. maintaining the Bespoke Model (which shall comprise carrying out a fly-over of the relevant geographical location at such intervals as VUCITY shall deem necessary), the Customer shall pay to VUCITY the Bespoke Model Maintenance Fee, within 30 days of receiving an invoice for the same. VUCITY shall invoice the Customer for the Bespoke Model Maintenance Fee annually for the duration that the Customer continues to have access to the Bespoke Model.
- 3.2. The Bespoke Model Fee and Bespoke Model Maintenance Fee are to be paid in pounds sterling (£) and are exclusive of any VAT, duties, bank fees, sales tax, or excise or similar or other taxes due.
- 3.3. VUCITY reserves the right to increase the Bespoke Model Maintenance Fee for any Renewal Term entered into under clause 8 of the Conditions. Should VUCITY wish to increase the Bespoke Model Maintenance Fee for the Renewal Term, it shall notify the Customer 90 days' before the end of the Term or relevant Renewal Term.
- 3.4. Clauses 5.4 and 5.6 to 5.8 of the Conditions shall apply to payment of the Bespoke Model Fee and Bespoke Model Maintenance Fee.

### 4. REPRESENTATIONS AND WARRANTIES

- 4.1. VUCITY warrants that it has used reasonable skill and care in the production of the Bespoke Model. Any material discrepancies, errors, missing features or other issues that would reasonably affect the Customer's use of the Bespoke Model must be notified to VUCITY in writing within 14 days from the date of the Customer receiving access to the Bespoke Model.
- 4.2. VUCITY shall use reasonable endeavours to rectify any issues raised in accordance with paragraph 4.1 within 14 days of receiving written notice from the Customer.
- 4.3. If any issues raised in accordance with paragraph 4.1 cannot be rectified by VUCITY in accordance with paragraph 4.2, then this Bespoke Model Addendum shall terminate with immediate effect.
- 4.4. In the event that any issues raised in accordance with paragraph 4.1 are rectified by VUCITY in accordance with paragraph 4.2, then a new limited warranty period will begin for a period of 14 days from the date of such rectification.

### 5. EFFECT OF TERMINATION OF THE BESPOKE MODEL ADDENDUM

- 5.1. Where the Bespoke Model Addendum is terminated in accordance with paragraph 4.3 above, VUCITY shall refund to the Customer the Bespoke Model Fee, and the grant of any licence or access to the Bespoke Model shall terminate and the Customer shall immediately cease using the Bespoke Model. For the avoidance of doubt, termination of the Bespoke Model Addendum shall not otherwise affect the Condition or the rights, obligations and restrictions set out therein.