

## Vianet Limited (C49155)

Last Updated: 20<sup>th</sup> January 2025

## 1. Introduction

These terms and conditions (the “Terms” or “Agreement”) set forth a legally binding agreement between **you** (the “Customer”; “you” or “your”) and **Vianet Limited**, a private limited liability company registered in Malta, with company registration number C 49155 and whose registered office is situated at 2, Liesel Court, Mimosa Street, Gwardamangia, Pieta Malta and who are also known by the brand name Vianet (“Vianet”); “we”; “us” or “our”). All services and products that may be sold, supplied or licensed to you by Vianet shall be subject to, and governed by, these Terms.

**These Terms are incorporated in full and constitute an integral part to any Proposal (including any quote, invoice or proforma invoice) issued to you as well as any other agreement or provision of service or products, made by Vianet to you. Your acceptance to work with Vianet constitutes your full acceptance of these Terms, together with any additional terms that may be set out in the Proposal, and your agreement to be legally bound by them.**

Collectively, the Terms and the Proposal comprise the full binding, legal agreement between yourself and us (the “Parties”) for your purchase, receipt, license or use of the Products and/or Services which are the subject of that Proposal. This Agreement (which shall include these Terms and the applicable Proposal) also supersedes any additional or inconsistent terms, understandings, commitments, agreements, representations or conditions, whether oral or in writing, in any acknowledgement, purchase order or other documents proposed to or provided by you (the “Customer”).

No terms or conditions, other than those set out in these Terms and the applicable Proposal, shall be legally binding on Vianet, unless we expressly agree otherwise in writing.

## 2. Capacity

Prior to submitting a Proposal to us, carefully read each provision of these Terms and any of the additional terms that may be set out in the Proposal.

By submitting a Proposal, you hereby represent and warrant that:

- (i) You are legally capable of entering into the Agreement and are at least 18 years old, and of the legal age necessary in your state, province, jurisdiction, domicile or residence;
- (ii) If you are entering into the Agreement on behalf of a company or other legal entity, you have the right, authority and capacity to do so and to bind such entity to this Agreement, and which case the terms the “Customer”; “you” or “your” shall refer to such entity; and
- (iii) On behalf of yourself and/or as an authorised representation of the entity in whose name the Agreement is being entered into, as applicable, you agree to be legally

bound by these Terms and all additional terms and conditions that may be set out in the Proposal.

If any of the above representations and warranties are not applicable to you, or if you do not agree with all the terms and conditions stated in these terms or the Proposal, you must refrain from submitting a Proposal or using any of our Products or Services.

### 3. Definitions

3.1. The Following definitions shall apply in these Terms:

- 3.1.1. **'Agreement'** means these Terms, the Proposal agreed between the Parties for the provision of the Products and/or Services and any other agreement that may be requested to be signed between yourself and Vianet.
- 3.1.2. **'Best Industry Practice'** means practices, methods and procedures (or one of a range of practices, methods and procedures) which comply with applicable legislation and which would be adopted by a supplier exercising in the general conduct of its undertaking that degree of skill, diligence, prudence and foresight which would ordinarily and reasonably be expected from a supplier engaged in the business of providing services which are the same as or similar to the Services under the same or similar circumstances and conditions;
- 3.1.3. **'Charges / Fees'** means the charges and other fees, if any, as agreed between the Parties.
- 3.1.4. **'Commencement Date'** means the day on which Vianet is to commence the provision of the Products and/or Services.
- 3.1.5. **'Customer'** includes agents of the Customer as may be agreed between the Customer and such agents of the Customer.
- 3.1.6. **'Customer Data'** means all data, information, text, drawings and other materials which are embodied in any electronic, optical, magnetic or tangible medium and which are supplied to Vianet by the Customer and/or which Vianet is required to generate, collect, process, store or transmit in connection with this Agreement. Customer Data shall constitute Confidential Information for the purposes of this Agreement.
- 3.1.7. **'Force Majeure Event'** means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including, but not limited to, acts of God, riots, acts of terrorism, acts of government, fire, flood, storm or earthquake, pandemics or disaster.

- 3.1.8. **'Intellectual Property Rights'** includes, without limitation, patents, trademarks, registered designs, copyright, design rights and any other intellectual or industrial property rights.
- 3.1.9. **'Licensed Software'** means the machine-readable, object-code version of Vianet's proprietary software, including all related documentation and any modified, updated or enhanced versions and recovery images of the program provided by Vianet to the Customer. Licensed Software does not include Third-Party Software offered under a third-party license agreement, but it may include Third-Party Software that is sub-licensed to the Customer by Vianet subject to the terms of this Agreement;
- 3.1.10. **'Location'** means whichever premises designated by the Customer.
- 3.1.11. **'Normal Working Hours'** means 09.00 to 17.00 hours Monday to Friday, excluding Public Holidays.
- 3.1.12. **'Extended Working Hours'** means 0900 to 1900 Hours Monday to Friday, excluding Public Holidays.
- 3.1.13. **'24/7 Support'** means support provided on every day of the year, 24 Hours on Monday to Sunday including public holidays.
- 3.1.14. **'Parties'** means Vianet and the Customer jointly.
- 3.1.15. **'Products'** means any one or more of third- party products or services provided, supplied, sold or resold by Vianet to the Customer as set forth in the Proposal; hardware, third party subscription services, sub-license to use licensed software, third party support services, third party professional services and third-party software.
- 3.1.16. **'Proposal'** means the ordering documents, in a form specified by Vianet, which is signed and/or submitted by Customer to Vianet (as applicable).
- 3.1.17. **'Resource'** refers to the personnel of Vianet tendering the Services for and on behalf of Vianet, who in any case must have the necessary skills.
- 3.1.18. **'Service'** means the services to be provided by Vianet as detailed in the Proposal accepted by the Customer.
- 3.1.19. **'Term'** means the period from the Commencement Date until the termination date of this Agreement as stipulated herein.
- 3.1.20. **'Third Party'** means any person other than the Customer and Vianet.
- 3.1.21. **'Third-Party Software'** means any software, licensed as a stand-alone product or as a part of another software, which is not owned by Vianet or its subsidiaries.

#### 4. Interpretation

4.1. In these Terms, unless the context requires otherwise:

- 4.1.1. Headings are inserted for convenience only and will not affect the construction or interpretation of these Terms;
- 4.1.2. Words importing the singular include the plural and vice-versa;
- 4.1.3. A reference to any party shall include that party's permitted assignees and successors in title;
- 4.1.4. Any reference to a statute, statutory instrument, or other regulations includes all provisions, rules and regulations made under them and will be interpreted as reference to such statute, statutory instrument, or regulations as in force at the date of these Terms; and
- 4.1.5. The exhibits form an integral part to these Terms.

#### 5. Scope

5.1. The Parties agree that during the Term, Vianet shall be responsible to provide the Products and/or Services as detailed in the Proposal.

5.2. This Agreement outlines the parameters of all Services and/or Products covered as they are mutually understood by the parties. This Agreement supersedes any other arrangement between the parties for the provision of other services unless explicitly stated herein.

5.3. The Parties agree that if during the Term, the Customer requires any other services in addition to the Services provided for in the Proposal, the terms and conditions of this Agreement shall apply also to such other services. Additional services shall be subject to the payment of Charges as applicable to them, and which Charges shall be made available to the Customer prior to the provision of such additional services.

5.4. Where a Proposal / invoice does not include the location for delivery, then the location/place of delivery will be deemed to be in Malta and, in the case of physical Products, up to ground-floor level. It is the Customer's sole responsibility to advise Vianet of any special delivery requirements that are needed and, for all such cases, Vianet reserves the right to revise or adjust any quotation which may have been already provided to the Customer.

#### 6. Terms of Payment

6.1. The Customer shall, in consideration of the provision of the Products and/or Services in accordance with this Agreement pay Vianet the Charges, after a receipt of a proper invoice issued by Vianet. Should the Customer fail to pay the Charges within one (1) month from the issuance of the invoice, late payment interest of 8% shall apply for each day of delay.

- 6.2. Without prejudice to the above, Vianet may periodically revise the Charges or tariffs by giving at least two (2) months advance notice in writing.
- 6.3. Any additional services agreed to by both parties and not covered under this Agreement shall be regulated by separate terms and conditions and Vianet shall be remunerated for such additional services rendered in accordance to the agreement between the parties.
- 6.4. The Customer shall reimburse Vianet all expenses incurred by itself, its directors or its employees in the performance of its duties in terms hereof including but not limited to travel and accommodation, long distance telephone calls, faxes and telexes and any disbursements made on the Customer's behalf.
- 6.5. It is further agreed that fees which have already been invoiced or paid will not be refunded or waived should the service be stopped prior to the termination of the invoiced period.
- 6.6. If Vianet agrees to provide credit terms to the Customer, then Vianet reserves the right, in its absolute discretion, to: (i) place or vary a limit on the amount allowed to be outstanding by the Customer at any time, (ii) vary the credit terms by providing not less than thirty (30) days' written notice of the new or varied credit terms; (iii) refuse to extend further terms to the Customer; or (iv) withdraw the Customer's credit terms.

## **7. Responsibilities and Warranties of Vianet**

- 7.1. The standard of the provision of the Products and/or Services shall be in accordance with the Agreement. To the extent that the standard for the provision of the Products and/or Services has not been specified, Vianet shall use good quality materials, techniques and standards and shall provide the Products and/or Services with care, skill and diligence.
- 7.2. Vianet undertakes that the Resource shall be available as and when requested by the Customer for the provision of the Products and/or Services, provided that reasonable notification is given by the Customer to Vianet and/or the Resource, account being taken of the urgency of the matter and the availability of Vianet.
- 7.3. Vianet's Resource shall be expected to attend meetings convened by the Customer or any Third Party to discuss and report on services provided or the progress of works and shall be expected to liaise during the Term with Third Parties indicated by the Customer.
- 7.4. Vianet shall immediately inform the Customer in the event that Vianet's Resource is unable to provide the Services when requested by the Customer.
- 7.5. Vianet's Resource shall adhere to industry standards, methodologies techniques and procedures exercised by the Customer and shall exercise a degree of skill, care and diligence in accordance with generally accepted practices and principles.

- 7.6. Vianet's Resource shall comply with the safety, security and other reasonable rules and regulations applicable at the Customer's Location, including health and safety regulations, security standards and environmental protection.
- 7.7. The Customer reserves the right to supervise the manner, time and place in which Vianet's carries out the Service for the Customer throughout the Term and may give directions to Vianet if these are necessary for the proper performance of the Services in line with the Customer's requirements.
- 7.8. Vianet represents and warrants that:
- (a) the Resource is suitably experienced for the purposes for which Vianet is required by the Customer and that Vianet shall provide the Products and/or Services with the degree of diligence expected from a service provider of similar size and nature of business, and in accordance to the Customer's legitimate expectations as resultant from the type and extent of service and budgets selected by such Customer.
  - (b) Vianet and/or the Resource will not act in any manner to the prejudice of the Customer and, if necessary, shall assist the Customer in good faith in the presentation, prosecution or litigation of any disputes, differences, claims or complaints by any Third Party against the Customer.
  - (c) the Products and/or Services shall not infringe upon nor violate any patent, copyright, trade secret, or any right of Third Party, and shall not be libellous or otherwise unlawful.
  - (d) as at the date of this Agreement:
    - (i) it has full capacity and authority to enter into and to perform this Agreement; and
    - (ii) once duly executed this Agreement will constitute its legal, valid and binding obligations.
- 7.9.

## 8. Responsibilities of the Customer

- 4.1 The Customer shall afford to Vianet safe access to the Location as may be necessary for the proper performance of the Services.
- 4.2 The Customer shall undertake to provide payment to Vianet for all services tendered by the same in accordance with the relative service level as indicated in the Proposal, and payment for other supplementary or additional services that may be requested, needed, or solicited by the Customer from time to time.
- 4.3 The Customer undertakes to provide Vianet with the necessary information in a timely manner if such information is necessary for the performance of the Services by Vianet.
- 4.4 The Customer shall group non-critical support requests to be serviced by Vianet on the same day.
- 4.5 During the term of this Agreement and for a period, after the termination of this Agreement, equal to two (2) years regardless of who initiates the termination and for whatever reason, the Customer shall not directly or indirectly, for itself, or on behalf of, or in conjunction with, any other person(s), company, entity, partnership or corporation in any manner whatsoever i) solicit or recruit or attempt to solicit or recruit any current

employees of Vianet, ii) solicit or recruit or attempt to solicit or recruit any person who was an employee of Vianet during a twelve (12) month period prior to such solicitation iii) encourage any such person not to devote his or her full business time to Vianet or iv) agree to hire or employ any such person.

## 9. Third Party Software

- 9.1. Any Third-Party Software included in any licensed software, including any open-source software, may be subject to third party terms and conditions ("Third-Party Terms").
- 9.2. It shall be your duty to request Vianet for a copy of any applicable Third-Party Terms, and it is your duty to read and review them carefully. You understand and agree that you are bound by such Third-Party-Terms.
- 9.3. To the extent of any conflict between any Third-Party Terms and any terms and conditions in your Agreement with us, the Third-Party Terms shall prevail in connection with the corresponding Third-Party Software (but only, and strictly up to, to the extent of conflict.) notwithstanding anything contained in this Agreement to the contrary, Vianet does not make any representation, warranty, guarantee, condition, and does not undertake any defence or indemnification, with respect to any third party software, nor shall Vianet be liable for any failings or shortcomings presented by Third-Party Software.
- 9.4. Subject to the Third-Party Terms, Vianet hereby grants you, the Customer, a limited, non-exclusive, non-transferrable, revocable right and licence (without any rights to sub-license) to:
  - 9.4.1. Install and use, in object code only, the Licensed Software strictly for your internal business purposes;
  - 9.4.2. Use any related documentation strictly in connection with your permitted use of the Licensed Software;
  - 9.4.3. In the case of any one of the above, strictly for the term specified in the Proposal.
- 9.5. Except to the extent expressly permitted by applicable laws or these Terms, you shall not, and shall not permit, authorise or encourage any third party (including, without limitation, your officers, staff, agents or contractors) to do any of the following:
  - 9.5.1. Copy or reproduce the Licensed Software or related documentation;
  - 9.5.2. Sell, assign, lease, lend, rent, distribute, sublicense, or make available the Licensed Software or related documentation to any third party;
  - 9.5.3. Use the Licensed Software or related documentation to operate in or to provide business services to other companies;
  - 9.5.4. Integrate, incorporate, include or bundle the Licensed Software into any other software;
  - 9.5.5. Use the Licensed Software or related documentation for any inappropriate purpose; harassment or infringement or contrary to any applicable law; or
  - 9.5.6. Modify, alter, adapt, arrange, translate decompile, disassemble, reverse engineer, or otherwise make attempts to discover or derive the source code (or the underlying structure, sequence or organisation) of, the Licensed Software.

9.6. Vianet shall have the right to revoke and terminate the Customer's Licence with immediate effect, without an obligation to provide any remedy or cure period, where the Customer (i) breaches (in whole or in part) any of the conditions or limitations of use stipulated herein, or (ii) makes, or attempts to make, any form of commercial use or other exploitation of the Licensed Software (or allows any third party to carry out the same).

## 10. Liability and Indemnity

- 10.1. The Customer acknowledges that the Products and/or Services provided are of such a nature that the service can be interrupted for reasons out of the control of Vianet. On its part the Customer agrees that Vianet shall not be liable for any damages arising from such causes beyond the direct and exclusive control of Vianet.
- 10.2. Vianet bears no liability for third-party services or Third-Party Software such as Microsoft 365, Google Workspace, Dropsuite, BitDefender, etc. Each service and /or product has its own terms and conditions between the Customer and the respective third-party provider, which can be viewed directly from their third-party website.
- 10.3. Except as otherwise specifically provided herein, neither Party shall be liable to the other for loss of profits, loss of business, or for any other special, punitive, or consequential loss or damages unless arising from gross negligence or a wilful act or omission of the other Party.
- 10.4. In no event shall Vianet be liable either in contract, tort (including negligence) or otherwise for indirect, incidental or consequential damages, including without limitation, loss of income, data, use or information.
- 10.5. It is further agreed that Vianet shall not be responsible for any damages which result directly or indirectly from any unauthorised or negligent use of the Customer's infrastructure and endpoints, including but not limited to unauthorised installation of software on the Customer's infrastructure and endpoints.
- 10.6. Parties agree that whenever the service or part of the service involves the creation and management of any website or mobile application or similar, Vianet shall not be liable for any damages or losses sustained by the Customer resulting out of any improper or fraudulent use of said the website or application by any person.
- 10.7. Parties further agree that Vianet shall not, in anyway be held liable for any damages or losses suffered by the Customer which are resulting from the unauthorised or fraudulent access of the Customer's infrastructure and endpoints, including ransomware attacks.
- 10.8. Any claim by the Customer against Vianet under this Agreement may only be brought against Vianet within one (1) year of the event or omission giving rise thereto.
- 10.9. Each of the Parties shall indemnify, protect and defend the other Party, its employees, agents or authorised representatives from and against all actions, claims, losses or

damages arising directly or indirectly as a result of fraud, bad faith, wilful default or negligence of that Party, its employees, agents or authorised representatives in performing its obligations pursuant to this Agreement.

10.10. Notwithstanding any other provision of the Agreement, the maximum liability of the service provider under the Agreement per breach of Agreement shall be limited to the total value of the Agreement exclusive of VAT.

## **11. Ownership and Rights**

11.1. The Products, and any all new versions, and any and all adjustments, corrections, customisations, enhancements and other modifications any licensed software, and any and all documentation provided through the Services, whether made by Vianet or any third party, are the proprietary property of Vianet and/or its licensors or suppliers (as applicable) and are protected by copyright laws and other laws and treaties on Intellectual Property Rights.

11.2. Nothing in this Agreement shall have the effect, or be construed as having the effect, of assigning, transferring, disposing or conferring onto the Customer any rights, title or interest in and to any Intellectual Property Rights to any (i) Products, (ii) new versions of the Products or (iii) adjustments, corrections, customisations, enhancements or other modifications to any licensed software, all of which shall remain vested in Vianet or its applicable licensor or supplier at all times.

11.3. For the avoidance of doubt, this clause 11 is without prejudice to the limited rights of use granted to the Customer by virtue of this Agreement. For avoidance of doubt, the rights of the Customer to use any such Intellectual Property Rights belonging to Vianet or its applicable licensor or supplier shall, at all times, be strictly limited to what is expressly contained in these Terms.

11.4. Vianet reserves all rights that are not expressly granted to the Customer under the Agreement, and nothing in this Agreement shall constitute or be construed as a waiver by Vianet of any of its Intellectual Property Rights under any law or those of its licensors or suppliers.

11.5. The Customer shall retain all Intellectual Property Rights arising from materials and documentation owned by the Customer at the time of signature of the Agreement and used in the course of the provision of the Services. All data, information, text, drawings and other materials which are embodied in any electronic, optical, magnetic or tangible medium, and which are supplied to Vianet by the Customer is the sole property of the Customer.

## **12. Notices and Communication**

12.1. All notices or communications under or in connection with this Agreement shall be in English.

12.2. Each communication to be made hereunder shall be in writing but, unless otherwise stated, may be made by registered letter, fax by any electronic means.

12.3. Any notice or other document to be served under this Agreement may (except as expressly provided herein) be delivered, or sent by post or by electronic mail to the following address or such other address as Vianet may subsequently notify to the Customer:

<b>Notices to Vianet</b>
Vianet Limited 2, Liesel Court, Mimosa Street, Gwardamangia, Pieta', PTA1042 accounts@vianet.com.mt

12.4. In the case of communications sent via electronic means, the parties recognise and accept all associated risks including lack of security, unreliability of delivery and possible loss of confidentiality. Such communications shall be regulated by any relevant legislation in force from time to time.

**13. Termination**

13.1. Vianet shall have the right to terminate this Agreement together with all licenses, Products and Services with immediate effect should the Customer, or any of its representatives, contravene any provision of this Agreement or perform/s any serious act or omission which is contrary to law whether in Malta or outside Malta.

13.2.

13.3. The Customer shall be entitled to terminate the Agreement in the event that Vianet is in material breach of any of its obligations under this Agreement and fails to remedy such breach without reasonable justification within thirty (30) days from a written notice requesting the remedy thereof.

13.4. Termination of this Agreement for whatever cause shall not prejudice Vianet's rights to payment of Fees due up to the date of termination.

13.5. Vianet reserves the right to charge the Customer an early termination fee of 75% of the remainder agreement value, should the agreement be terminated by the Customer through no fault of Vianet. Such fee will be due immediately.

13.6. Upon termination of this Agreement, the Customer shall:

13.6.1. Pay for all work in process and all Products and/or Services ordered as of the effective date of termination, as applicable. In addition, if a Proposal specifies a term for which Vianet shall provide Services to the Customer (e.g. 12 months) and that Proposal is terminated by Vianet for cause (such as non-payment) or, where permitted under these Terms, by the Customer without cause, then all future, recurring service fees associated with the remaining Term of that Proposal shall become immediately due and payable, and shall be paid by Customer to Vianet upon the effective date of such termination;

- 13.6.2. In full cooperation with Vianet, return and arrange for the return to Vianet of all Products rented or leased by the Customer from or through Vianet under this Agreement;
  - 13.6.3. Remove all copies, or otherwise permit Vianet to remove all copies, of any licensed software or third-party software provided by Vianet in relation to the Services being terminated, from its compute systems and shall return or destroy, at Vianet's discretion, all such copies; and
  - 13.6.4. transfer all its data held on the server systems of Vianet to another server system and/or service provider within one (1) month period from the date of termination of this Agreement.
- 13.7. Upon termination of the said period and without the need to do any further verifications, Vianet shall have the right to delete from its server systems all data pertaining to the Customer and, Vianet shall not be held responsible, whether directly or indirectly, for any loss of data which the Customer fails to transfer from the server systems of Vianet in terms of this Clause.

#### **14. Confidential Information**

- 14.1. During the term of this Agreement Vianet may be exposed to Confidential Information of the Customer or any other person or entity connected. Vianet acknowledges that any such Confidential Information shall at all times during and after the termination of this agreement remain the exclusive property of the Customer. Vianet shall not directly or indirectly disclose to any third party any such confidential information, howsoever received. In view of the foregoing, Vianet agrees to limit dissemination of the Confidential Information only to those of its employees who need to know the same and only to the extent necessary to provide the services contemplated hereunder. Vianet agrees to inform such employees of the existence and nature of this undertaking and its applicability to them.
- 14.2. The obligations contained in this Clause shall not apply to any information:
- a. which is public knowledge at the date hereof or subsequently becomes public knowledge without fault or breach of Vianet or its employees;
  - b. which is known to Vianet at the time of disclosure (and is appropriately documented as such);
  - c. which is received from a third party who is not under an obligation of non-disclosure or confidentiality to the Customer or
  - d. which is required to be disclosed pursuant to applicable laws, regulations or court order.

#### **15. Data Protection**

- 15.1. The Parties agree that in view of the nature, type and extent of services being provided under this Agreement, Vianet will have direct or indirect access to the Personal Data of the Customer. For the purposes of this clause, also includes the personal data of data subjects of such Customer who are natural persons, such as clients and employees thereof.

- 15.2. The Parties agree that any processing of Data by Vianet shall comply with the Data Protection Act (Chap 586 of the Laws of Malta) and EU General Data Protection Regulation (Regulation 2016/679) as amended and updated from time to time.
- 15.3. The Parties further confirm and agree that the Customer hereby accepts that Vianet will have such access and may hence act as Processor in relation to Personal Data of the Customer, and on its part Vianet undertakes to process such data in terms of law and of this agreement.
- 15.4. The Customer confirms and warrants that it is duly empowered to appoint Vianet to carry out the services envisaged herein and to entrust Vianet to act, directly or indirectly as a Processor in terms of Data Protection law.
- 15.5. The Customer further confirms and warrants that it has itself complied with all Data Protection Laws and Regulations in relation to the Personal Data, and specifically that it has attained consent from its Data Subjects on the processing of the Data (where applicable) and has informed them on the possibility that their data will be entrusted to and/or processed by a third-party processor or sub-processor, such as Vianet.
- 15.6. Where applicable, the Customer also confirms and warrants that it has a proper internal Data Protection Policy in Place and in conformity to the Law, and it only processes Data in terms of such Policy and the prevailing legislation.
- 15.7. Vianet warrants and undertakes that the personal data of the Customer will be processed fairly and will not be processed for any purpose that is incompatible with the services being provided herein and processed in terms of the instructions given by the Customer.
- 15.8. Vianet confirms that it has proper Data Protection Policies to ascertain that it complies with data protection obligations in terms of law and furthermore it confirms that its employees and agents who may have access to the personal data of the Customer are subject to confidentiality undertakings and obligations in terms of their engagements.
- 15.9. Vianet warrants that, having regard to cost and development of implementing measures, it will:
- 15.9.1. Take appropriate technical and organisational measures against the unauthorised or unlawful processing of Controller Personal Data and against the accidental loss or destruction of, or damage to, Controller Personal Data to ensure a level of security appropriate to:
    - 15.9.1.1. The harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - 15.9.1.2. The nature of the data to be protected.
  - 15.9.2. Take reasonable steps to ensure compliance with those measures.

15.10. The Parties agree that Vianet may have independent subcontractors or other service providers that may have general access to its general data, henceforth indirectly to the personal data of the Customer, and henceforth the Customer is hereby consenting to the use of such sub-contractors or service providers and such access as long as this is ancillary to the services being provided by the said sub-contractors or services providers.

In the event that Vianet decides to appoint sub-processors dealing specifically with the personal data of the Customer, than it shall provide the Customer with a prior written notice of one (1) month prior to the appointment of such sub-processor, including details of the processing to be undertaken by the sub-processor. The Customer has ten (10) working days from the receipt of that notice to notify Vianet in writing of any objections to the proposed appointment. The arrangement between Vianet and its sub-processor will be regulated by means of a contract to ensure that sub-processor performs its obligations and that an adequate level of protection is provided to the personal data of the Customer.

15.11. In case of any personal data breach, Vianet will notify the Customer without undue delay upon Vianet or its sub-processor becoming aware of a personal data breach with a description of the nature of the personal data breach and shall provide assistance as may be required in terms of law.

15.12. Taking into account the nature of the processing and the information available to Vianet, Vianet shall assist the Customer, by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligations pursuant to GDPR.

15.13. Vianet may only process, or permit the processing of Personal Data of the Customer outside the EEA under the following conditions:

15.13.1. Vianet is processing Personal Data of the Customer in a territory which is subject to a current finding by the European Commission under the relevant data protection laws that the territory provides adequate protection for the privacy rights of individuals; or

15.13.2. Vianet participates in a valid cross-border transfer mechanism under data protection laws, so that Vianet (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by GDPR; or

15.13.3. The transfer otherwise complies with the data protection laws for detailed reasons communicated in advance in writing to the Customer by Vianet.

15.14. Subject to the above, where Personal Data of the Customer originating in the EEA is processed by Vianet outside the EEA and in a territory that has not been designated by the European Commission as ensuring an adequate level of protection to data subjects (adequacy decision), the Parties hereby agree that the transfer between the Customer and Vianet shall be subject to and governed by the Standard Contractual Clauses (as in force at the relevant point in time), which contractual clauses shall be deemed to apply in respect of any all such processing carried out by

Vianet outside the EEA. Vianet shall ensure and hereby undertakes that it shall not commence any processing of the Personal Data of the Customer outside the EEA until both Vianet and the Customer have confirmed that they have obtained any mandatory approvals required from relevant data protection authorities. Both parties also hereby warrant, undertake and bind themselves to, in the event of such a third-country transfer (as described above), promptly execute those Standard Contractual Clauses with one another.

- 15.15. The Customer has the right to access, the right to rectify, the right to restrict and, where applicable, the right to erase the data concerning him.
- 15.16. Personal data shall be retained by Vianet for as long as necessary to fulfil the purposes of this Agreement, and to the extent and for such period allowed or required by applicable laws and regulatory requirements.
- 15.17. The Parties hereby agree that Vianet shall allow and contribute to audits and, make available information to the Customer within one (1) month following a written request by the Customer on such date and time provided by Vianet, for the purposes of demonstrating compliance in relation to the processing of the personal data of the Customer by Vianet.

## **16. FORCE MAJEURE**

- 16.1. Neither party shall be liable for delay or failure to perform any of its obligations under the Agreement insofar as the performance of such obligation is prevented by any unforeseeable event beyond its reasonable control. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure Event.
- 16.2. If either of the Parties hereto is prevented from fulfilling its obligations under the Agreement by reason of a Force Majeure Event, it shall give notice of this to the other Party immediately giving details of the nature, the probable duration and the likely effect of the circumstances giving rise to the Force Majeure Event.

## **17. EXCLUSIVE SERVICE**

- 17.1. The parties accept that this Agreement creates an exclusive arrangement between the parties wherein the Customer shall make solely and exclusively make use of Vianet in relation to the Services provided herein.
- 17.2. The Parties agree and accept that Vianet shall not be liable or responsible for any damages of whatever nature that may be sustained by the Customer and which are resulting from any unauthorised access by any other Provider or Person to the Customer's infrastructure and end points.

## **18. ASSIGNMENT AND SUBCONTRACTING**

- 18.1. The parties agree that Vianet may subcontract and assign the Services to a subcontractor.
- 18.2. Such assignment or subcontracting shall not relieve Vianet from the obligations under the Agreement or impose any liability upon the Customer to any assignee or subcontracted Provider of Vianet
- 18.3. Any assignment, contracting in breach of the provision of this Article shall be null and void.

**19. WAIVER**

A waiver of any failure to comply with any term of the Agreement must be written and signed by the aggrieved party. Each waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

**20. AMENDMENT OF AGREEMENT**

- 20.1. The Parties agree that Vianet may unilaterally amend this agreement electronically, by means of an updated published Terms and Conditions. In such instance Vianet shall send an e-mail notification to the Customer informing same of an amendment of the Terms and Conditions and henceforth to this agreement, and such changes shall apply within 20 days from the sending of such e-mail notification.
- 20.2. It is the responsibility of the Customer to immediately inform Vianet about a change of e-mail or contact details of the Customer.

**21. ENTIRE AGREEMENT**

- 21.1. This Agreement including the Appendices constitutes the entire understanding between the Parties with respect to the Products and/or Services provided and shall supersede all prior oral or written communications with respect to the subject matter of this Agreement.
- 21.2. No other term or condition which Vianet may seek to impose or any contrary or additional terms and conditions contained in Vianet's Proposal or any licensing agreements will apply, unless as advised in this Agreement. Any such term or condition will be considered null and void unless agreed to in writing by both parties.

**22. GOVERNING LAW AND ARBITRATION**

- 22.1. The constitution, termination and enforcement of this Agreement shall be construed and regulated in terms of Maltese Law.
- 22.2. Any dispute, controversy or claim arising out of or relating to this Agreement, including any such dispute, controversy or claim relating to a breach, termination or validity of this Agreement, shall be settled by arbitration in accordance with the rules of the Malta Arbitration Centre as at present in force.

22.3. Arbitration proceedings shall be commenced as soon as a notice of arbitration is filed at the Malta Arbitration Centre by any one of the Parties. The place of arbitration shall be Malta and the language used during the Arbitration shall be the English language.

22.4. The Parties irrevocably:

- a. submit to the non-exclusive jurisdiction of the Malta Arbitration Centre;
- b. waive any objections on the ground of venue or forum non conveniens or any similar grounds;
- c. consent to service of process by post or any other manner permitted by the relevant law.