

# VIOTEL SAAS TERMS OF USE

## 1 APPLICATION

- 1.1 These Terms apply to the use of the SaaS Services by the Customer and its Permitted Users (as defined below). By clicking I agree or accessing and using the SaaS Services:
- a you agree to these Terms;
  - b you confirm that you are a Permitted User; and
  - c you confirm that you are authorised to, and do in fact, agree to these Terms on behalf of the Customer and that, by agreeing to these Terms on the Customer's behalf, the Customer is bound by these Terms.
- 1.2 If you do not agree to these Terms or you are not a Permitted User, you are not authorised to access and use the SaaS Services, and you must immediately stop doing so.

## 2 CHANGES

- 2.1 Viotel may change these Terms at any time by notifying the Customer by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. You and the Customer will be bound by the changed Terms if, from the date on which the Terms are changed, you continue to access and use the SaaS Services.
- 2.2 These Terms were last updated on 19<sup>th</sup> October, 2023.

## 3 INTERPRETATION

In these Terms:

*Authorised Reseller* means any reseller authorised by Viotel to resell the SaaS Services.

*Confidential Information* means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the SaaS Services. Viotel's Confidential Information includes Intellectual Property owned by Viotel. The Customer's Confidential Information includes the Data (if applicable).

*Customer* means the legal entity that has subscribed to the SaaS Services, either directly with Viotel or through an Authorised Reseller.

*Data* means all data, content, and information owned, held, used or created by the Customer or on its behalf that is stored using, or inputted into, the SaaS Services.

*Fees* means the fees for the SaaS Services agreed between Viotel and the Customer in writing or, where the Customer has subscribed to the SaaS Services through an Authorised Reseller, the fees for such subscription agreed between the Customer and the Authorised Reseller.

*Force Majeure* means an event that is beyond the reasonable control of a party, excluding:

- ▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- ▲ a lack of funds for any reason.

*including* and similar words do not imply any limit.

*Intellectual Property Rights* includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.

*Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

a *party* includes that party's permitted assigns.

*Permitted Users* means the Customer's personnel who are authorised to access and use the SaaS Services on the Customer's behalf in accordance with clause 5.5.

a *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

*personnel* includes officers, employees, contractors and agents, but a reference to the Customer's personnel does not include Viotel.

*SaaS Services* means the data logging, data visualisation, datamining and monitoring services that the Customer has subscribed to, either directly with Viotel or through an Authorised Reseller.

*Subscription Term* means the term selected by the Customer when subscribing to the SaaS Services (whether directly with Viotel or through an Authorised Reseller).

*Related Company* has the meaning given in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that subsection included any body corporate of any jurisdiction).

*Terms* means these terms titled *Viotel SaaS Terms of Use*.

*Underlying Systems* means the IT solutions, systems and networks (including software and hardware) used to provide the SaaS Services, including any third party solutions, systems and networks.

*Viotel* means the contracting entity specified in clause 13.

*Website* means [www.viotel.co/](http://www.viotel.co/)

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

#### **4 PROVISION OF SAAS SERVICES**

4.1 Viotel must use reasonable efforts to provide the SaaS Services:

- a in accordance with these Terms and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

4.2 Viotel's provision of the SaaS Services to the Customer is non-exclusive. Nothing in these Terms prevents Viotel from providing the SaaS Services to any other person.

#### **5 SERVICES**

5.1 Subject to clause 5.2, Viotel must use reasonable efforts to ensure the SaaS Services are available on a 24/7 basis. However, it is possible that on occasion those SaaS Services may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. Viotel must use reasonable efforts to notify advance details of any unavailability to the Customer by email.

5.2 Through the use of web services and APIs, the SaaS Services may interoperate with a range of third party service features (**Third Party Features**). Viotel does not make any warranty or representation on the availability of those Third Party Features. Without limiting the previous sentence:

- a if a Third Party Feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, Viotel may cease to make the relevant Third Party Feature available to the Customer. If Viotel ceases the availability of a Third Party Feature:
  - i where the Customer has subscribed to the SaaS Services directly with Viotel and Viotel is charging the Customer a fee for that Third Party Feature as a separate item from the Fees for the SaaS Services, Viotel will cease charging the Customer that fee, with effect from the date Viotel ceases the availability of the Third Party Feature; and
  - ii no other refund, discount or other compensation will be payable by Viotel; and
- b if a Third Party Feature provider changes the terms on which it provides that feature to Viotel, Viotel may change these Terms as it considers necessary to reflect that change in accordance with clause 2.1.

5.3 The Customer and its personnel must:

- a use the SaaS Services in accordance with these Terms solely for:
  - i the Customer's own internal business purposes; and
  - ii lawful purposes; and
- b not resell or make available the SaaS Services to any third party, or otherwise commercially exploit the SaaS Services.

5.4 When accessing the SaaS Services, the Customer and its personnel must:

- a not attempt to undermine the security or integrity of the Underlying Systems;
- b not use, or misuse, the SaaS Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Services;
- c not attempt to view, access or copy any material or data other than:
  - i that which the Customer is authorised to access; and
  - ii to the extent necessary for the Customer to use the SaaS Services in accordance with these Terms;
- d neither use the SaaS Services in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights); and
- e comply with any other reasonable policy or condition notified by Viotel to the Customer.

5.5 Without limiting clause 5.4, no individual other than a Permitted User may access or use the SaaS Services. The Customer may authorise any member of its personnel to be a Permitted User, in which case the Customer must provide Viotel with the Permitted User's name and other information that Viotel reasonably requires in relation to the Permitted User. The Customer must procure each Permitted User's compliance with clauses 5.3 and 5.4.

5.6 A breach of any of these Terms by the Customer's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of these Terms by the Customer.

## **6 DATA**

6.1 The Customer is responsible for procuring all licences, authorisations and consents required for the Customer and its personnel to use the SaaS Services, including to use, store and input Data into, and process and distribute Data through, the SaaS Services.

6.2 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the Customer's property. The Customer grants Viotel a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate

the Data for any purpose in connection with the exercise of Viotel's rights and performance of its obligations in accordance with these Terms.

6.3 The Customer acknowledges that:

- a Viotel may require access to the Data to exercise its rights and perform its obligations under these Terms; and
- b to the extent that this is necessary but subject to clause 9, Viotel may authorise a member or members of its personnel to access the Data for this purpose.

6.4 The Customer must arrange all consents and approvals that are necessary for Viotel to access the Data as described in clause 6.3.

6.5 The Customer acknowledges and agrees that:

- a Viotel may:
  - i use Data and information about the Customer's and its personnel's use of the SaaS Services to generate anonymised and aggregated statistical and analytical data (**Analytical Data**);
  - ii use Analytical Data for its internal research and product development purposes and to conduct statistical analysis and identify trends and insights;
- b Viotel's rights under clause 6.5aii above will survive termination of expiry of these Terms; and
- c title to, and all Intellectual Property Rights in, Analytical Data is and remains Viotel's property.

6.6 While Viotel will take standard industry measures to back up all Data stored using the SaaS Services, Viotel does not guarantee that Data will not be lost. It is the Customer's responsibility to back up the Data.

6.7 The Customer agrees that Viotel may store Data in secure servers in overseas territories and may access that Data in such overseas territories, New Zealand and Australia from time to time.

6.8 The Customer indemnifies Viotel against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by Viotel's solicitors) and loss of any kind arising from any:

- a breach of clause 5.3 or 5.4; or
- b actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights).

## 7 FEES

The Customer must pay Viotel or, where the Customer has subscribed to the SaaS Services through an Authorised Reseller, the Authorised Reseller the Fees in accordance with the payment terms agreed with Viotel or the Authorised Reseller (as applicable).

## 8 INTELLECTUAL PROPERTY

- 8.1 Subject to clause 6.2, title to, and all Intellectual Property Rights in, all Underlying Systems is and remains Viotel's property. The Customer must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- 8.2 To the extent not owned by Viotel, the Customer grants Viotel a royalty-free, transferable, irrevocable and perpetual licence to use for its own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by Viotel in the provision of the SaaS Services.
- 8.3 If the Customer provides Viotel with ideas, comments or suggestions relating to the SaaS Services or Underlying Systems (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by Viotel; and
  - b Viotel may use or disclose the feedback for any purpose.

## 9 CONFIDENTIALITY

- 9.1 Each party must, unless it has the prior written consent of the other party:
- a keep confidential at all times the Confidential Information of the other party;
  - b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
  - c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 9.1a and 9.1b.
- 9.2 The obligation of confidentiality in clause 9.1 does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
  - b required by law (including under the rules of any stock exchange);
  - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;

- d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- e by Viotel if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Viotel enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

## **10 WARRANTIES**

10.1 Each party warrants that it has full power and authority to enter into, and perform its obligations under, these Terms.

10.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW:

- a VIOTEL'S WARRANTIES ARE LIMITED TO THOSE SET OUT IN THESE TERMS, AND ALL OTHER CONDITIONS, GUARANTEES OR WARRANTIES WHETHER EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE) ARE EXPRESSLY EXCLUDED; AND
- b VIOTEL MAKES NO REPRESENTATION CONCERNING THE QUALITY OF THE SAAS SERVICES AND DOES NOT PROMISE THAT THE SAAS SERVICES WILL:
  - i MEET THE CUSTOMER'S REQUIREMENTS OR BE SUITABLE FOR A PARTICULAR PURPOSE; OR
  - ii BE SECURE, FREE OF VIRUSES OR OTHER HARMFUL CODE, UNINTERRUPTED OR ERROR FREE.

10.3 The Customer agrees and represents that it is subscribing to the SaaS Services, and accepting these Terms, for the purpose of trade. The parties agree that:

- a to the maximum extent permissible by law, no consumer protection laws apply to the supply of the SaaS Services; and
- b it is fair and reasonable that the parties are bound by this clause 10.3.

10.4 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, Viotel's liability for any breach of that condition or warranty is limited, at its option, to:

- a supplying the SaaS Services again; and/or
- b paying the costs of having the SaaS Services supplied again.

## **11 LIABILITY**

11.1 VIOTEL'S MAXIMUM AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THESE TERMS OR RELATING TO THE SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING

NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, MUST NOT IN ANY SUBSCRIPTION TERM EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY THE CUSTOMER IN THAT SUBSCRIPTION TERM.

11.2 NEITHER PARTY IS LIABLE TO THE OTHER UNDER OR IN CONNECTION WITH THESE TERMS OR THE SAAS SERVICES FOR ANY:

- a LOSS OF PROFIT, REVENUE, SAVINGS, BUSINESS, USE, DATA (INCLUDING DATA), AND/OR GOODWILL; OR
- b CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGE OR LOSS OF ANY KIND.

11.3 Clauses 11.1 and 11.2 do not apply to limit Viotel's liability under or in connection with these Terms for:

- a personal injury or death;
- b fraud or wilful misconduct; or
- c a breach of clause 9.

11.4 Clause 11.2 does not apply to limit the Customer's liability:

- a to pay the Fees;
- b under the indemnity in clause 6.8; or
- c for those matters stated in clause 11.3a to 11.3c.

11.5 Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

11.6 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or Services.

## **12 TERMINATION**

12.1 Where the Customer has subscribed to the SaaS Services directly with Viotel, either party may terminate these Terms and the Customer's right to access and use the SaaS Services with effect at the end of the then-current Subscription Term by giving not less than 30 days' notice to the other party.

12.2 Where the Customer has subscribed to the SaaS Services through an Authorised Reseller, the Customer and/or the Authorised Reseller may terminate the Customer's subscription to the SaaS Services in accordance with the terms agreed between the Customer and the Authorised



Reseller. These Terms and the Customer's right to access and use the SaaS Services will terminate on such termination.

- 12.3 Either party may, by notice to the other party, immediately terminate these Terms and the Customer's right to access and use the SaaS Services if the other party:
- a breaches any material provision of these Terms and the breach is not:
    - i remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
    - ii capable of being remedied; or
  - b becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.
- 12.4 Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.
- 12.5 No compensation is payable by Viotel to the Customer as a result of termination of these Terms for whatever reason, and the Customer will not be entitled to a refund of any Charges that it has already paid.
- 12.6 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms but subject to clause 12.7, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- 12.7 At any time prior to one month after the date of termination of these Terms, the Customer may request:
- a a copy of any Data stored using the SaaS Services, provided that the Customer pays Viotel's reasonable costs of providing that copy. On receipt of that request, Viotel must provide a copy of the Data in a common electronic form. Viotel does not warrant that the format of the Data will be compatible with any software; and/or
  - b deletion of the Data stored using the SaaS Services, in which case Viotel must use reasonable efforts to promptly delete that Data.

To avoid doubt, Viotel is not required to comply with clause 12.7a to the extent that the Customer has previously requested deletion of the Data.

- 12.8 Without limiting any other right or remedy available to Viotel, Viotel may restrict or suspend the Customer's access to and use of the SaaS Services and/or delete, edit or remove the relevant Data if Viotel considers that the Customer or any of its personnel have:

- a undermined, or attempted to undermine, the security or integrity of the SaaS Services or any Underlying Systems;
- b used, or attempted to use, the SaaS Services:
  - i for improper purposes; or
  - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service;
- c transmitted, inputted or stored any Data that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights); or
- d otherwise materially breached these Terms.

### **13 CONTRACTING ENTITY AND GOVERNING LAW**

The company the Customer is contracting with under these Terms is stated below. These Terms will be construed in accordance with and governed by the law set out below, and the parties submit to the non-exclusive jurisdiction of the courts stated below in relation to disputes arising out of or in connection with these Terms.

<b>If the Customer is domiciled in:</b>	<b>it will be contracting with:</b>	<b>the governing law is the law of:</b>	<b>the parties submit to the non-exclusive jurisdiction of:</b>
New Zealand	Viotel Limited, a New Zealand company, company number 7540596	New Zealand	the courts of New Zealand
Australia or any other country other than New Zealand	Viotel Australia Pty Ltd, an Australian company, ACN 645 231 349	Tasmania	the courts of Tasmania and the Commonwealth of Australia

### **14 GENERAL**

- 14.1 Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.
- 14.2 No person other than the Customer and Viotel has any right to a benefit under, or to enforce, these Terms.

- 14.3 For Viotel to waive a right under these Terms, that waiver must be in writing and signed by Viotel.
- 14.4 Viotel is an independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.
- 14.5 If Viotel needs to contact the Customer, Viotel may do so by email. The Customer agrees that this satisfies all legal requirements in relation to written communications. The Customer may give notice to Viotel under or in connection with these Terms by emailing [admin@viotel.co](mailto:admin@viotel.co).
- 14.6 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 6.8, 8, 9, 11, 12.4 to 12.7 and 13, continue in force.
- 14.7 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on the Customer.
- 14.8 Subject to clause 2.1, any variation to these Terms must be in writing and signed by both parties.
- 14.9 These Terms sets out everything agreed by the parties relating to the SaaS Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the date these Terms take effect. The parties have not relied on any representation, warranty or agreement relating to the SaaS Services that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the date these Terms take effect. The parties agree that it is fair and reasonable that the parties are bound by this clause 14.9.
- 14.10 The Customer may not assign, novate, subcontract or transfer any right or obligation under these Terms without Viotel's prior written consent, that consent not to be unreasonably withheld. The Customer remains liable for its obligations under these Terms despite any approved assignment, subcontracting or transfer.