



**Terms
&
Conditions**



Velvet Voice Terms and Conditions

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1. Definitions and Interpretations

- 1.1 **“Agreement”** means the full contract including the Application Form and these Terms and Conditions, Order form and Service Delivery Acceptance Form.
- 1.2 **“Customer”** means an individual or company having subscribed for Velvet Voice Services.
- 1.3 **“User”** means the Customer or any other person named by the Customer who is authorised to incur charges the Customer’s account.
- 1.4 **“Service”** means all priced services offered by Velvet Voice in the Agreement.
- 1.5 **“Contract Period”** means a period indicated on the Application form.
- 1.6 **“Charges”** means the connection charges, monthly service charges, usage charges and any other charges pertaining to the provisioning of the Service(s).
- 1.7 **“Connection”** means the process of giving the Customer access to the Service(s).
- 1.8 **“Connection Charges”** mean the Charges levied by Velvet Voice upon the Customer for activating a Service utilised by the Customer.
- 1.9 **“Customer Premises”** means the premises owned or rented by the Customer designated by the Customer as the place to install the Service(s) and equipment.
- 1.10 **“Equipment”** means the technical appliances such as routers, adaptors etc used to provide Velvet Voice Services.
- 1.11 **“Internet”** means world-wide networks interconnecting servers and personal computers using the internet protocols
- 1.12 **“Suspension”** means temporary disconnection of services.
- 1.13 **“Affiliate”** means, with respect to either Party, any other entity which is a subsidiary or a holding company or a subsidiary of the holding company of such Party.
- 1.14 **“Due Date”** means thirty (30) calendar days from the date of the invoice.



2. Provision of Service

- 2.1 The Customer agrees that the Service (s) are intended for its own use only and shall not resell the Service in whole or in part.
- 2.2 Velvet Voice reserves the right to suspend or cancel any or all of the Service (s) if it reasonably believes that the Customer or anyone the Customer permits to use the Service (s) is not compliant with this obligation.
- 2.3 In the event the Customer relocates during the subsistence of the Agreement, and the Customer still wants Velvet Voice service at their new location, Velvet Voice may:
 - activate the Service (s) at the new location or
 - the Customer may be advised to re-apply for service at the new location
 - Velvet Voice reserves the right to charge the customer for administration and costs arising from provision of services resulting from the Customer relocation. As at 2 June 2021 the relocation installation for Fibre Lite will be P1000.00 for both residential and business customers. For other products the relocation fees will be calculated and compliant with the allowable mark-up.
- 2.4 Unless the Service is provided on a dedicated or exclusive basis, Velvet Voice reserves the right to utilise any spare transmission capacity that it has installed for the Customer for the purpose of providing services to other Velvet Voice customers, provided that such use of spare capacity does not (i) have an adverse effect on the provision of the Services to the Customer; and (ii) such use of spare capacity does not result in Velvet Voice's failure to comply with all the Service Levels.
- 2.5 The Services shall be used by the Customer in accordance with the terms and conditions of this Agreement.
- 2.6 Velvet Voice may delay connection or disconnect service, for the protection of Customers and the network, whilst investigating instances where it reasonably suspects that the information given to is unauthorised or contains false particulars, without the knowledge of the person named.
- 2.7 Should the investigation reveal that the information was authorised, Velvet Voice will reconnect services and compensate the customer pro-rated for the period from the connection/disconnection to the conclusion of the investigation.
- 2.8 Should the investigation reveal that the information was unauthorised, Velvet Voice will terminate the Service(s) and the Customer shall not have any claim



against Velvet Voice for any damages suffered during the period of investigations in 2.6 above.

3. Service Usage

- 3.1 The Customer shall use the Service in a way that complies with the Service Application Agreement and legislation and shall not use the Service in an unlawful, criminal or fraudulent manner.
- 3.2 The Customer shall not knowingly send, receive, upload or download, use or re-use any material that is defamatory, indecent, abusive, obscene, menacing or discriminatory in nature.
- 3.3 The Customer shall not breach any copyright or confidentiality, privacy or any rights when using the Service.
- 3.4 The Customer shall not send any unsolicited advertising or promotional material.
- 3.5 Velvet Voice shall block any emails which may be reasonably be deemed as malicious or spam.

4. Velvet Voice Equipment

- 4.1 The appropriate equipment for the subscribed Service (s) shall be delivered to the Customer at the estimated delivery date.
- 4.2 The equipment shall be provided on a purchase basis.
- 4.3 The customer shall inspect the equipment immediately upon delivery and report any damages or anomalies to Velvet Voice.
- 4.4 The Customer shall be responsible for keeping the equipment securely. Velvet Voice shall not be liable for any fault/damage in the equipment caused by the Customer's negligence.
- 4.5 Velvet Voice shall not be liable for any damage to equipment caused by power surges. The Customer shall be responsible for ensuring that the power is protected from surges. Warranties will only cover manufacturing defaults.
- 4.6 In the event of damage to Velvet Voice equipment by failure to protect the equipment by the customer, Velvet Voice reserves the right to charge the customer the full replacement cost of the equipment at the prevailing market price of the said equipment.
- 4.7 All equipment not purchased by the Customer shall remain Velvet Voice property. Where Velvet Voice equipment is in the possession of the Customer, the



Customer agrees not to remove the equipment, keep it in good condition and protect it from loss or damage and allow Velvet Voice to inspect the equipment.

- 4.8 The Customer shall not allow anyone (other than a Velvet Voice authorised person) to add, modify or in any way interfere with the equipment.

5. Velvet Voice Obligations

- 5.1 Velvet Voice shall conduct checks including (but not limited to), geographical coverage, credit and technical. Only when Velvet Voice is satisfied with the checks shall provision of service commence.
- 5.2 Velvet Voice will notify the Customer where it is unable to provide service, providing reasons.
- 5.3 Velvet Voice shall not do, or permit to be done, anything in relation to the Service(s) which may reasonably be expected to damage or materially interfere in any way whatsoever with the proper normal operation of the Service provided to the Customer.
- 5.4 Velvet Voice's responsibility of the Service does not apply in relation to any point beyond the Velvet Voice equipment at the Customer premises.
- 5.5 In providing the Service(s), Velvet Voice shall comply with this Agreement and any applicable law.
- 5.6 Velvet Voice does not warrant that the Service(s) will be interrupted or fault free or that the transmission of information through the Service(s) will be secure.
- 5.7 Velvet Voice Service(s) may be temporarily suspended due to various reasons including maintenance, upgrades, emergency or third-party problems.
- 5.8 Velvet Voice shall give affected Customer(s) as much notice as is reasonably practical before carrying out the works envisaged in 4.6 above.
- 5.9 Velvet Voice shall provide technical support to the Customer for the resolution of faults.

6. Customer Obligations

- 6.1 The Customer shall comply with this Agreement and any applicable law.
- 6.2 The Customer shall provide Velvet Voice adequate access to such Customer premises, facilities and equipment, including home/ office space, data processing and communication facilities reasonably required for performance of the Service(s).



- 6.3 The Customer will inform Velvet voice when it becomes aware of any suspected or actual unauthorised use of the Service(s) and shall co-operate to the extent reasonably necessary and provide Velvet Voice with the necessary information to assist in identifying, preventing or remedying or rectifying such unauthorised use.
- 6.4 The Customer shall comply with the site requirements communicated to it prior to the installation of any Customer equipment or Velvet voice equipment at a Customer Site.
- 6.5 The Customer will be responsible for any equipment installed at its premises and shall use it in accordance with any applicable instructions, safety and security.
- 6.6 The Customer shall notify Velvet Voice of any intended move/relocation.
- 6.7 The Customer shall not by any means knowingly disseminate malicious code e.g. virus worms, which has infected their device.
- 6.8 The Customer shall be liable for all accounts raised as a result of the use of the Service(s). In the event that Velvet Voice has to institute any action or engage any agent/attorney to recover/collect payment of any bills, the Customer shall be liable to pay all legal costs, fees and commission related thereto.

7. Fees and Charges

- 7.1 The charges for usage of Service(s), equipment and installation shall apply from the connection date.
- 7.2 The Customer shall pay the charges on or before the Due Date.
- 7.3 Each Party shall be liable to pay any tax payable in terms of the Laws of Botswana.
- 7.4 The applicable monthly charges shall be fixed for duration of the Contract Term thereof.
- 7.5 The Customer shall make payment for the Service(s) by cheque or electronic funds transfer.
- 7.6 Velvet Voice reserves the right to refuse any payment method if there is reasonable cause to believe that such payment will be dishonoured.
- 7.7 Velvet Voice shall be entitled to adjust the monthly charges in the event that any regulatory, or government-imposed factors impact on such fees and charges. Any other charges shall be adjusted following BOCRA approval.
- 7.8 Velvet Voice shall distribute statements of charges via email. Should the Customer require a printed statement Velvet Voice reserves the right to charge for printing.
- 7.9 The Customer shall be responsible for reviewing its statement and notify Velvet Voice are any errors and/or omissions. Velvet Voice reserves the right to include



Charges in future statements that were incurred in previous months which have not already been billed to the Customer.

- 7.10 If the Customer fails to pay the Charges when due, Velvet Voice shall have the right to suspend and/or terminate any or all of the Service(s) without notice and take necessary action to recover sums due.
- 7.11 In the event that Velvet Voice suspends all or any of the Service(s) due to any breach of the payment terms by the Customer, the Customer shall pay the charges up to the month that they are owing.
- 7.12 Velvet Voice reserves the right to charge the Customer interest on overdue payments at prevailing prime lending interest rate plus two percent (2%), compounded monthly in arrears and calculated on a three hundred and sixty-five (365) calendar day year, such interest to run from the date upon which payment of the relevant amount became due until payment thereof has been made in full (together with interest).

8. Duration Term and Termination

- 8.1 This Agreement shall commence on the Effective Date and shall thereafter remain in force indefinitely, subject to the remaining provisions of this Agreement.
- 8.2 Unless otherwise terminated by the Parties in accordance with its terms, this Agreement shall be valid for the Contract Period.
- 8.3 Upon the expiration of such Contract Period, the applicable Services shall continue indefinitely, subject to either Party providing thirty (30) calendar day's written notice of termination to the other Party.
- 8.4 The Customer may terminate this Agreement before its expiry and the Customer shall pay Velvet Voice all charges due and lump sum equal to 10% of the monthly recurring charge multiplied by the remainder of the months the contract has run for.
- 8.5 Upon termination, the Customer shall pay Velvet Voice any moneys due and owing and such termination shall not prejudice or affect any right of action or remedy which has accrued or will accrue to any Party and all provisions which are expressed or impliedly intended to survive this Agreement shall remain in full force or effect.
- 8.6 Velvet Voice may terminate the Agreement if the Customer is in breach of any material term of the Agreement.
- 8.7 Velvet Voice may also terminate the Agreement if the Customer or any person using the Customer's account misuses or abuses the Service(s) in any way, including instances where Velvet Voice receives a complaint from a third party that reasonably appears justified.



- 8.8 The Agreement may be terminated if bankruptcy or other insolvency proceedings are brought against the Customer.
- 8.9 The Agreement may be terminated if the Customer is no longer lawfully able to receive the Service(s).
- 8.10 Upon termination of the Agreement for whatever reason, the Customer agrees to return the equipment to Velvet Voice and BTC shall be granted access to uninstall and uplift it.
- 8.11 In the event of termination, all the information Velvet Voice is storing on the Customer's behalf on Velvet Voice servers may be deleted and in particular Velvet Voice may delete all the emails in the Customer's email account.

9. Complaints Procedure

- 9.1 The Customer shall log Service complaints via email to enquiries@velvetvoicebw.com.
- 9.2 Velvet Voice shall endeavour to address and resolve all Customer complaints within a reasonable time frame.

10. Confidentiality and Data Privacy

- 10.1 Velvet Voice shall endeavour to keep Customer information confidential and shall not disclose any Personal Information to any other person except as required by law.
- 10.2 The Customer grants Velvet Voice the right to disclose Personal Information to its affiliates for the purposes of providing the Service(s).
- 10.3 Velvet Voice shall strictly comply with any applicable laws, regulation or code relating to data protection in Botswana.
- 10.4 Velvet Voice shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than providing the Services to the Customer other than with the express prior written consent of the Customer.
- 10.5 The Customer shall be responsible for complying with any data protection laws and regulations.
- 10.6 The Parties record that all Data, in whatever form, is the Customer's Intellectual Property. Accordingly, the Customer retains all right, title and interest in and to the Data.

11. Limitation of Liability

- 11.1 The Parties agree that any liability to the other Party for Losses hereunder shall be limited to direct damages.
- 11.2 The Parties shall not be liable for any Losses which are regarded in law as indirect, special, incidental, consequential, punitive or exemplary damages and which damages arise out of or in connection with this Agreement.
- 11.3 Velvet Voice shall not be liable to the Customer for:
 - 11.3.1 the interruption, suspension or termination of the Services for whatever reason
 - 11.3.2 any loss or damage which is related to the Customer's business including but not limited to; loss of profits, savings, revenue, or business interruption.
 - 11.3.3 loss or damage arising as a result of lost, damaged or corrupted data.
 - 11.3.4 any costs arising from unauthorised access to and/or use of any equipment or devices, including Customer Devices, used by the Customer to access the Service(s).
 - 11.3.5 Velvet Voice will not be liable for any failure to perform an obligation or Services to the Customer because of any factors beyond its control, including but not limited to acts of God (force majeure), industrial action, war, epidemics etc.
 - 11.3.6 Nothing contained in this clause 16 shall limit the Customer's liability in respect of Charges incurred for Services.

12. Breach

- 12.1 Either Party shall be entitled to terminate this Agreement in the event of the other Party committing a material breach of any of the terms of the Agreement and failing to remedy such breach within a period of thirty (30) calendar days after receipt of written notice drawing its attention to the breach and demanding that it be remedied.

13. Changes to Services

- 13.1 Either of the Parties may request to modify or adjust any element of the Service(s).
- 13.2 The Party who requests the change shall forward a change request to the other Party, setting out the details of the change request.

- 13.3 Velvet Voice shall investigate the feasibility, cost implications and impact of the change request on the Services and notify the Customer of the results of this feasibility study;
- 13.4 The Customer shall provide written consent to Velvet Voice if they decide to proceed with the change. That instruction shall be binding on the Parties and the Agreement shall be deemed to be amended accordingly.
- 13.5 If the Parties cannot agree upon the necessary amendments, the change request shall not be implemented.

14. Governing Law

- 14.1 This Agreement is to be interpreted in accordance with Laws of the Republic of Botswana currently in force and those that will be enacted from time to time.
- 14.2 If any of the terms in this Agreement are not valid or legally enforceable, the other terms will not be affected.
- 14.3 Velvet Voice may replace any term that is not legally effective with a similar term that is.

15. Dispute Resolution

- 15.1 In cases of disputes or differences arising from this Agreement or in its interpretation, the Parties shall endeavour to resolve such disputes or differences amicably.
- 15.2 In the event of a deadlock, the Parties shall agree on the identity of an arbitrator to hear the matter. Should they be unable to agree on the appointment of the arbitrator within fourteen (14) calendar days of the declaration of a deadlock, then any party to the dispute or difference may request that the President of the Botswana Institute of Arbitrators ("BIOA") shall appoint a suitable arbitrator to hear the dispute or difference.
- 15.3 The proceedings shall be held at a venue in Gaborone and, unless otherwise agreed by the Parties, in accordance with the formalities and procedures determined by the arbitrator in accordance with the Rules of BIOA.
- 15.4 Any Party may appeal the decision of the arbitrator in concordance with the BIOA Rules of Appeal.
- 15.5 In the event where the outcome of the arbitration process is not satisfactory to either Party, they may refer the dispute to a competent court of the Republic of Botswana.



15.6 The expiration or termination of this Agreement shall not affect this clause, which shall survive such expiration or termination.

16. Intellectual Property Rights

16.1 Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.

16.2 Each Party indemnifies the other Party against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claims of infringement, passing-off and/or unlawful competition in relation to any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party, which claim arises directly or indirectly out of the unlawful and/or unauthorised use by a Party of the Intellectual Property Rights of the other Party.

17. Cession and Assignment

17.1 No rights, duties or liabilities under this Agreement may be ceded, assigned, transferred, conveyed or otherwise disposed of by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, subject to 16.2 below.

17.2 Velvet Voice is entitled to cede, transfer and make over its right, title and interest in and to any and all debts and receivables due and/or payable to Velvet Voice under this Agreement, both future and present arising under this Agreement, as security or otherwise. The Customer hereby recognises and consents to such cession and/or transfer.