

## GENERAL CONDITIONS FOR BUSINESS CUSTOMERS

### 1 DEFINITIONS AND INTERPRETATION

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

TERM / EXPRESSION	MEANING
"Add-On Service"	means an optional add-on or bolt-on service that the Customer chooses to take which does not form part of the core services under the Agreement and which has no Minimum Period or has a Minimum Period or notice period of 30 days or less;
"Affiliate"	means any undertaking which is a subsidiary undertaking or parent undertaking (including the ultimate parent undertaking) of the relevant party and any company which is a subsidiary undertaking of such parent undertaking (the terms subsidiary undertaking and parent undertaking company having the meanings set out in Section 1162 of the Companies Act 2006);
"Agreement"	means this agreement between the Customer and O2 recorded in the documents described in clause 28 of these General Conditions;
"Ancillary Service"	means an extra service (excluding an Add-On Service) which is linked to the core services provided under this Agreement, which the Customer uses, registers or signs up for and, where relevant, is described as an ancillary service in its terms and conditions;
"API" or "Annual Price Increase"	means the yearly adjustment to your Rental Charges, increasing by £1.50 (excluding VAT) each April;
"Business Tariff"	means Business, Business SIMO, Business Data Only, Business Data SIMO, Best for Business PAYU, Mobex and any proposition that allows customers to share data, minutes and texts;
"Charges"	means the monies payable by the Customer to O2 under this Agreement, including Rental Charges, as set out in the Commercial Schedule, the relevant Service Schedule and on the O2 Website (as amended from time to time in accordance with the terms of this Agreement);
"Commencement Date"	means the date upon which this Agreement has been signed by the Customer;
"Commercial Schedule"	means the document or documents entitled Commercial Schedule, which set out the Charges associated with a particular Service, all of which shall form part of this Agreement;
"Confidential Information"	means proprietary information and/or any information obtained from the other party in connection with this Agreement (including for the avoidance of doubt details of the Customer's employees) which is: (i) reasonably identified by either party as commercially sensitive or confidential; (ii) obviously confidential in nature; or (iii) given in circumstances giving rise to an obligation of confidence;
"Customer"	has the meaning set out in front of this Agreement in the section entitled "Your Agreement";
"Customer Employee"	means any employee, consultant, agent or sub-contractor (or an employee or consultant thereof) engaged or employed by the Customer or any Third Party to provide a Service or services similar to a Service or any part of a Service;
"Customer Request Form"	means a document which can be submitted electronically or manually by a Customer to O2 containing the detailed information necessary to fulfil a Customer's order for Services, in the form notified by O2 to the Customer from time to time;
"Customer Service Charter"	means O2's standard customer service charter as amended by O2 from time to time and which is non-binding;
"Data Protection Laws"	means all applicable laws and regulations relating to the processing of personal data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 once in force ("GDPR") and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms "Data Controller", "Data Processor", "Data Subjects" and "Personal Data" shall have the meaning given to them in the DPA or GDPR;

TERM / EXPRESSION	MEANING
"Employee Liability Information"	shall have the meaning ascribed to it in the TUPE Regulations, as amended from time to time;
"End User Licensed Software"	means any software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a "click wrap" or "shrink wrap" licence agreement;
"Equipment"	means equipment purchased by the Customer from O2 under this Agreement which may be used in the provision of the Services, as detailed in the Commercial Schedule, quotation, order form or other document agreed between the parties from time to time;
"General Conditions"	means this document entitled "General Conditions for Business Customers";
"Incident"	means any reported event which is not part of the standard operation of a Service and which causes disruption to or a reduction in the quality of such Service;
"Internet"	means the global data network comprising interconnected networks using the TCP/IP protocol suite;
"Minimum Holding"	means the minimum number of instances of a Service (e.g. lines) which must remain connected to a particular Service as specified in the Commercial Schedule or Service Schedule;
"Minimum Holding Charge"	means, in relation to a particular Service, the Charges payable for that Service for a failure to reach and maintain the Minimum Holding(s), as specified in the Commercial Schedule;;
"Minimum Holding Period"	means, in relation to a particular Service, the number of months from the Service Commencement Date within which the Customer is required to connect the Minimum Holding(s), as specified in the Commercial Schedule or Service Schedule;
"Minimum Period"	means the minimum number of months a particular Service or instance of a Service must be in operation for which, unless specified otherwise in any Terms, a Service Schedule or the Commercial Schedule, shall be 12 months from the Service Commencement Date;
"Minimum Spend"	means the minimum total expenditure which must be incurred by the Customer prior to the expiry of the Minimum Term, in relation to all or a particular Service or Services, as set out in the Commercial Schedule(s) or Service Schedule, and excludes any Equipment Charges or other line items, unless specified in the Commercial Schedule;
"Minimum Term"	means the initial period of this Agreement as specified in the Commercial Schedule and if not specified shall be the period from the Commencement Date until the expiry of the last Minimum Period;
"Network"	means the O2 network and the network of any Third Party used by O2 to supply the Services, as applicable;
"O2"	means Telefonica UK Limited as set out in front of this Agreement in the section entitled "Your Agreement" ;
"O2 Employee"	means any employee or other staff of O2 or an O2 Affiliate; or any employee or other staff of any direct or indirect sub-contractor or supplier of O2 or an O2 Affiliate who provides the Services on behalf of O2;
"O2 Representative"	means a representative of O2 and which includes a representative of O2's suppliers;
"O2 Website"	means <a href="http://www.o2.co.uk">www.o2.co.uk</a> ;
"Personal Data Breach"	means any breach of security leading to the accidental or unauthorised destruction, loss, alteration, disclosure of, or access to, Personal Data;
"RPI Rate"	means the "RPI Percentage change over 12 months: monthly rate" announced by the Office for National Statistics in the February preceding an RPI Change;
"Rental Charge(s)"	means the monthly non-usage dependent part of the Charges for the Services, as specified in the Commercial Schedule;
"Replacement Services"	means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than O2 following the termination of this Agreement (or the relevant part of this Agreement) or the termination of any or all of the Services;
TERM / EXPRESSION	MEANING
"Service(s)"	means the service(s) identified in the Commercial Schedule(s) and provided by O2 as such service(s) are described in the Terms, Service Schedules and/or Commercial Schedule as applicable and any other services agreed by the parties from time to time;, including but not limited to any Ancillary Services;

“Service Commencement Date”	in respect of a Service or a particular instance of a Service means the date on which that particular Service or particular instance of a Service is first provided to the Customer, or as otherwise explicitly set out in this Agreement;
“Services Provider”	means a provider of telecommunications services or other services similar to the Services, including O2 or an O2 Affiliate or any direct or indirect supplier of O2 or an O2 Affiliate;
“Service Schedule”	means the document entitled “Service Schedule” containing additional terms relating to a particular Service which schedule shall form part of this Agreement;
“Service Transfer”	means the transfer of a Service (or any part of a Service) that had been provided pursuant to this Agreement (as a result of termination of this Agreement or otherwise);
“Site”	means (where applicable) a physical location at which any Equipment shall be located and/or at or to which a Service shall be provided;
“Small Biz Tariff”	means Small Biz, Small Biz SIMO, Small Biz Data Only, and MBB SIM Only tariffs;
“Software”	means any software, excluding End User Licensed Software, supplied to the Customer by O2 under this Agreement and includes all other software identified in this Agreement as “Software”;
“Solution Build Document” and “SBD”	means a design document produced by O2 and agreed between the parties, which describes particular Services in a greater level of detail, as further described in the relevant Service Schedule;
“Successor Supplier”	means any entity (including the Customer where relevant) which provides the Replacement Services;
“Target Delivery Date”	in respect of a Service means the date for the commencement of the provision of the relevant Service as specified by O2;
“Termination Fee”	in respect of a Service, means the termination fee set out in the Commercial Schedule, and if not otherwise specified, means: the monthly Rental Charge for each instance of a Service multiplied by the remaining number of part or whole months in the Minimum Period for each instance of that Service; and the Minimum Holding Charge; and any shortfall between the actual Charges paid by the Customer and the Minimum Spend ;
“Term”	means the term of this Agreement as set out in clause 2.1 of these General Conditions;
“Terms”	means documents entitled “Terms” containing additional terms relating to particular Services or Equipment which shall form part of this Agreement;
“Third Party”	means a person, company or entity other than O2 or the Customer;
“TUPE Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended from time to time);
“User”	means Customer Employees, subcontractors, agents or anyone else who is permitted by the Customer to use the Service; and
“Working Day”	means Monday to Friday (excluding UK bank and public holidays).

- 1.2 The headings in this Agreement are for ease of reference only and shall not affect its construction.
- 1.3 References in this Agreement to any statute or statutory instrument shall include any re-enactment, modifications or amendments thereto for the time being in force.
- 1.4 References to clauses, sub-clauses, paragraphs, Terms and Service Schedules refer, unless otherwise stated, to clauses and sub-clauses of, and schedules to, this Agreement, and paragraphs to the Service Schedules.
- 1.5 Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.6 Any obligation (including an obligation to “procure” or “ensure”) assumed by an obligor under this Agreement takes effect as a primary obligation.
- 1.7 References in this Agreement to a Service shall include any instance of such Service as applicable (for example, reference to a landline Service shall include both all landline Services provided to the Customer and/or each individual landline, as the context requires).

- 1.8 Where a term or acronym appears in capital letters and is not specifically defined in this Agreement it shall have its industry standard meaning as would be reasonably understood by a customer or supplier of telecommunications or information technology services.

## **2 COMMENCEMENT AND TERM**

This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter until the last remaining Service is terminated in accordance with this Agreement.

## **3 SUPPLY OF SERVICES AND/OR EQUIPMENT**

- 3.1 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in this Agreement, O2 shall supply the Services and/or Equipment as applicable in accordance with the terms of the Agreement.
- 3.2 O2 shall commence supplying a Service on the relevant Service Commencement Date and shall supply those Services for the relevant Minimum Period and thereafter until terminated by either party in accordance with the provisions of this Agreement.

## **4 O2 OBLIGATIONS**

- 4.1 O2 will supply the Services with the reasonable skill and care of a competent telecommunications service provider.
- 4.2 O2 does not guarantee that the Services will be continuously available and/or fault-free. The Customer acknowledges that faults may occur from time to time, provided that any specific availability or service levels agreed between the parties or as set out in a Service Schedule will take precedence.
- 4.3 O2 will use reasonable endeavours to provide the Services subject to technical and commercial feasibility.

4.4 Subject to clause 11 and clause 13.3, O2 shall be entitled to change the way it provides a Service, provided that any change to the way it provides such Service does not materially impact the ability of O2 to provide the Service to the Customer.

4.5 O2 shall use reasonable endeavours to provide the Services and/or Equipment within any time periods and/or by any date indicated to the Customer, but all time periods and dates (including the Target Delivery Date) are estimates and except where explicitly stated O2 shall have no liability for any failure to meet any date or perform any of its obligations within the time period indicated.

## **5 THE CHARGES**

5.1 The Charges for Services and/or Equipment detailed in the Commercial Schedule(s) are available subject to the Customer fulfilling all of its commitments as set out in this Agreement, including but not limited to:

- a) paying the Charges in accordance with this Agreement; and
- b) achieving any applicable Minimum Spend, Minimum Holding and/or Minimum Period.

5.2 The Customer shall pay the Charges for:

- a) each Service provided by O2 (whether or not the Service is used by the Customer);
- b) where applicable, the Equipment; and
- c) any other products or services agreed between the parties from time to time, in accordance with this clause 5.

5.3 Most Charges are set out in the Commercial Schedule(s). Where a Charge is not set out in the Commercial Schedule, the Charge shall be:

- a) as set out on the O2 Website at the time the Equipment, Service or other agreed product or service was supplied; or
- b) as notified to the Customer by O2 (including in a Service Schedule or SBD).

5.4 Usage based Charges shall be based upon data recorded by or on behalf of O2.

5.5 The Charges are exclusive of value added tax which will be charged at the prevailing rate.

5.6 On expiry of Minimum Term O2 reserves right to vary the Charges.

5.7 If you are a business customer and your Agreement started before 25 March 2021, your Rental Charges will increase by the RPI Rate of inflation announced every February.

5.8 If you entered into your Agreement:

(a) before 25 March 2021, and you are a customer on a Small Biz Tariff, O2 will increase your Rental Charges by the RPI Rate announced every February. If the February RPI Rate is equal to or less than zero, your Rental Charges will stay the same;

(b) between 25 March 2021 and 08 January 2025, and you are a customer on a Small Biz Tariff, O2 will increase the Rental Charges annually by a percentage comprised of (i) the RPI Rate plus (ii) 3.9%. If the February RPI rate is equal to or less than zero your Rental Charges will be increased by 3.9%; and

(c) On or after 09 January 2025, and you are a customer on a Small Biz Tariff, O2 will apply an Annual Price Increase to your Rental Charges. This increase of £1.50 (excl. VAT) will take effect annually in your April bill.

- 5.9 If you are on a Business Tariff, your Rental Charges will be increased by the RPI Rate. If the February RPI Rate is equal to or less than zero your Rental Charges will stay the same.

The RPI Rate is announced in February and your Rental Charges will take effect in your April bill. O2 will publish the relevant RPI Rate on the O2 Website as soon as it becomes available.

## **6 INVOICING AND PAYMENT**

- 6.1 Unless otherwise agreed with the Customer, O2 may issue to the Customer on a monthly basis in relation to Services and on delivery in relation to Equipment one or more invoice(s) which shall set out the Charges due in accordance with this Agreement.
- 6.2 Unless otherwise stated in the Commercial Schedule, the Customer shall pay:
- a) monthly, quarterly or annually (as applicable) in advance for Rental Charges and other recurring Charges (including inclusive usage Charges); and
  - b) monthly, quarterly or annually (as applicable) in arrears for usage (excluding inclusive usage Charges), connection and other non-recurring Charges.
- 6.3 If the parties agree that payments of the Charges to O2 are to be made by credit card and if payments of such Charges are not made on the due date, O2 is authorised to debit the Customer's nominated credit card company with all Charges due and payable to O2.
- 6.4 The Customer shall pay each invoice issued by O2 under this Agreement (including any invoice relating to Termination Fees) within 30 days of the date of invoice. The invoice shall be deemed paid once O2 receives such payment as cleared funds in its nominated bank account.
- 6.5 The Customer shall pay the Charges (including any Termination Fees) in full without any deduction or set off.
- 6.6 O2 may, without prejudice to any other rights it may have, set off any liability of the Customer to O2 against any liability of O2 to the Customer.

### **Late payment**

- 6.7 Without prejudice to any other rights of O2, in the event of the Customer failing to pay any sums due to O2 on time or at all, notwithstanding notification by O2 of the overdue debt to the Customer, O2 shall be entitled to:
- a) charge interest (both before and after any judgment) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 4% per annum over the base rate of the Bank Of England for the time being during the relevant period; and
  - b) suspend the provision of the relevant Service(s) with as much prior notice as O2 considers to be reasonably practicable, until such time as all payments due including all interest accrued has been paid and satisfied in full.
- 6.8 If O2 and the Customer agree in writing that O2 will issue individual invoices for certain Services for all or some of the Customer's Users, the Customer will ensure that each User pays O2 within 30 days of the invoice date either by direct debit or by continuous credit card authority. Such Users must update O2 with new credit card details should they change.
- 6.9 To avoid doubt, the Customer remains liable to O2 for all Charges whether or not invoiced to Users in accordance with clause 6.8. If Users do not pay their individual invoices within 30 days of the invoice date, the Customer must pay them within 7 days thereafter.

- 6.10 If the Customer, in breach of clause 6.7, does not ensure that all Users pay by direct debit or by continuous credit card authority, O2 may charge the Customer for the additional cost of processing non-electronic payments from Users.

#### **Credit security**

- 6.11 Prior to O2's acceptance of a Customer's application for Services and/or following any credit check described in clause 30 of these General Conditions, O2 reserves the right to set a credit limit on the Charges that can be accrued under this Agreement and O2 can review any such credit limit at any time.
- 6.12 O2 may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of each 12 month period after the deposit was taken but the decision to return any deposit prior to termination of the Agreement will be at the discretion of O2.

### **7 NEW SERVICES New services on the terms of the O2 Website**

- 7.1 The Customer may request new services on the terms set out on the O2 Website by placing a new service order with O2 through such methods as O2 may make available or notify to the Customer from time to time. O2 shall be entitled to accept or reject a new service order. Once a new service order is accepted by O2:
- a) the new service order, including any Services under it, shall form a separate contract between the Customer and O2 and such contract shall be subject to the same terms as those set out in this Agreement (including for the avoidance of doubt, the terms of the O2 Website applicable to the new services as well as any applicable Service Schedule(s)) as if they had been executed between the parties on the date that O2 accepted the new service order ; and
  - b) O2 shall supply to the Customer the services requested in that new service order on, and subject to, the terms and conditions set out in this Agreement as if they had been executed between the parties on the date that O2 accepted the new service order, to the express exclusion of any alternative terms appearing on or referred to in any other communication (whether oral, in writing or by electronic means) by the Customer or otherwise and any such terms shall be ineffective . **New services on bespoke terms**
- 7.2 The Customer may request a new service at any time on terms other than those set out on the O2 Website. In the event that O2 and the Customer agree the terms that would apply to such new services, such terms shall (i) be agreed in writing between the parties, (ii) form a separate contract between O2 and the Customer in respect of the applicable service (unless agreed or specified otherwise within the written agreement of the parties) and (iii) shall apply to the exclusion of all other terms and conditions.

### **8 CUSTOMER OBLIGATIONS**

- 8.1 The Customer shall and shall procure that Users (or anyone having access to the Services), shall:
- a) comply with any reasonable instructions from O2 and with any health and safety, security, use of Network and fair usage policies as may be implemented and/or amended from time to time relating to the use of the Services and/or Equipment;
  - b) not use the Services and/or Equipment in a manner which damages the reputation of O2 or O2's suppliers, is inconsistent with a reasonable customer's good faith use of the Services and/or Equipment (including spamming and the sending of unsolicited advertising or promotional material), and/or adversely affects the provision of the Services and/or Equipment to other customers;
  - c) not use the Services and/or Equipment fraudulently or in connection with a criminal offence;
  - d) not use the Services and/or Equipment in a way that contravenes any Third Party's rights or any licence, code of practice, instructions or guidelines issued by a relevant regulatory authority;

- e) hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or Equipment;
  - f) notify O2 of any methods of doing business which may affect the Customer's use of the Services and/or Equipment or the Customer's ability to comply with the terms of this Agreement; and
  - g) comply with all applicable laws and regulatory provisions. h)
- 8.2 Subject to clause 10 of these General Conditions, the Customer agrees that it is procuring the Services solely for its own use and that it will not re-sell or otherwise act as any form of distributor in respect of the Services.
- 8.3 The Customer shall provide O2 with any and all information and/or assistance that O2 may require in order to perform the Services. The Customer shall ensure the information is complete and accurate. O2 shall not be responsible for any failure and/or delay to provide the Services if such failure and/or delay is a result of the Customer's failure to provide O2 with the required information and/or assistance. The Customer shall reimburse O2 for any administrative charges that it incurs as a result of information that it receives in accordance with this clause 8.3 that is incomplete or inaccurate.
- 8.4 The Customer shall notify O2 immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services.
- 8.5 The Customer agrees and acknowledges that O2 and/or a supplier of O2 may monitor and record calls or other communications including in relation to O2's customer services.
- 8.6 The Customer acknowledges that some of the Services enable access to the Internet and that use of the Internet is solely at the Customer's risk and subject to all applicable laws. O2 has no responsibility for any information, software, services, goods or other materials obtained by the Customer using the Internet.
- 8.7 The Customer warrants to O2 that it will take all reasonable steps (including testing with up-to-date commercially available virus detection software) to ensure that any software used with or in connection with the Services that is not provided by O2 under this Agreement is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.

## **9 ANTI-BRIBERY AND CORRUPTION**

- 9.1 In addition to and without prejudice to clause 8.1g) of these General Conditions, O2 and the Customer each agree and undertake to the other that in connection with this Agreement and the transactions contemplated by this Agreement, they will each respectively comply with all applicable laws, rules, regulations of the United Kingdom relating to anti-bribery and anti-money laundering.
- 9.2 In the event that O2 or the Customer (as applicable) (the "Enquirer") has any basis for a good faith belief that the other party may not be in compliance with the undertakings and/or requirements set out in clause 9.1 of these General Conditions, the Enquirer shall advise the other party in writing and the other party shall co-operate fully with any and all enquiries undertaken by or on behalf of the Enquirer in connection therewith, including by making available the other party's relevant personnel and supporting documents if reasonably deemed necessary by the Enquirer.
- 9.3 Any breach by a party of this clause 9 of these General Conditions shall be deemed to be a material breach of this Agreement not capable of remedy for the purposes of clause 13.6a) of these General Conditions.

## **10 CUSTOMER AFFILIATES**

- 10.1 O2 acknowledges that the Customer may permit a Customer Affiliate to use the Services and Equipment supplied by O2 to the Customer under this Agreement. The Customer will procure that its



Affiliates and all Users are aware of and comply with the terms of this Agreement. The Customer shall be liable to O2 for any and all:

- a) claims, losses and expenses suffered or incurred by O2 as a result of a breach of a term of this Agreement resulting from a User's use of the Services and/or Equipment; and
- b) losses, costs and expenses resulting from any claims against O2 made by any of the Customer's Affiliates or Users (or any other Third Party whom the Customer has permitted to use a Service and/or Equipment) to the extent that such claims exceed the financial caps and other limitations on liability as set out in this Agreement.

10.2 The foregoing liabilities shall remain in full force and effect notwithstanding any termination of this Agreement.

## **11 VARIATIONS TO THE AGREEMENT**

11.1 O2 reserves the right from time to time to vary the Agreement as explicitly stated in this Agreement, including as follows:

- a) Subject to clause 5.3a) of these General Conditions, O2 shall be entitled to vary the Customer Service Charter and/or the O2 Website. For variations to the Charges set out on the O2 Website, such variations shall be published at <http://www.o2.co.uk> at least 30 days before such changes come into effect or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body or as a result of a change in applicable law, regulation, guideline or code of conduct, as much notice as is reasonably practicable; and
- b) O2 shall be entitled to vary the provisions of this Agreement (including for the avoidance of doubt, the Charges subject to clause 13.3 of these General Conditions). O2 will provide to the Customer at least 30 days' notice in writing of any such variation or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body or as a result of a change in applicable law, regulation, guideline or code of conduct, as much notice as is reasonably practicable.

11.2 Where O2 makes a change to the Agreement and such change would give the Customer a right to terminate the Agreement under clause 13.3 of these General Conditions, O2 shall notify the Customer of the change and such right to terminate in accordance with clause 11.1(b) of these General Conditions. Where no such right to terminate under clause 13.3 of these General Conditions arises, notice of such change shall be provided in accordance with clause 11.1(a) or 11.1(b) of these General Conditions as applicable.

## **12 SUSPENSION Planned Outages**

12.1 O2 may, from time to time, upon reasonable notice where practicable, suspend the Services during any modification or maintenance of the Network and, unless specifically agreed with the Customer, shall have no liability in relation to such suspension.

### **Unplanned Outages**

12.2 O2 may, from time to time and without notice or liability to the Customer, suspend the Services during any technical failure of the Network because of an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's or Users' own security.

12.3 O2 shall use reasonable endeavours to restore the Services suspended in accordance with clause 12.1 or 12.2 of these General Conditions as soon as reasonably practicable.

12.4 The Customer shall remain liable for all Charges levied in accordance with this Agreement during any period of suspension arising from the circumstances described in clause 12.1 or 12.2 of these General Conditions.

### **Actions of the Customer**

12.5 O2 may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:

- a) if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including but not limited to failure to pay any Charges due hereunder); or
- b) if the Customer allows anything to be done which in O2's reasonable opinion may have the effect of jeopardising the operation of the Services or Network if applicable, or if the Services are being used in a manner prejudicial to the interests of O2 and/or a supplier of O2.

12.6 If O2 has suspended the Services in accordance with clause 12.5 of these General Conditions, O2 shall restore the Services when the circumstance described in clause 12.5 of these General Conditions is remedied.

12.7 The Customer shall remain liable for:

- a) all Charges levied in accordance with this Agreement during any period of suspension; and
- b) all reasonable costs and expenses incurred by O2 in the implementation of such suspension or disconnection,

where such suspension or disconnection arises from the circumstances described in clause 12.5 of these General Conditions.

### **Actions of O2's suppliers**

- 12.8 O2 may, without prejudice to its other rights hereunder, suspend or terminate a Service if an O2 supplier suspends, terminates or lets expire the provision of services to O2 which O2 requires to provide such Service and for which O2 is unable to find a replacement supplier, having used its reasonable endeavours. O2 will provide as much notice as is reasonably possible.

### **Actions by regulators**

- 12.9 O2 may, where requested by or on behalf of a regulatory body (including because of fraud or misuse) or required to do so by law, suspend any Services provided under this Agreement.

## **13 TERMINATION Termination for convenience**

- 13.1 The Customer may terminate this Agreement (in whole or in relation to a particular Service) by:

- a) providing to O2 30 Working Days' notice in writing; and
- b) paying O2 the applicable Termination Fees in respect of the Service or Services being terminated.

For the avoidance of doubt, Termination Fees may be payable in accordance with the Service Schedule or Commercial Schedule if the Customer terminates an order for Services prior to the Service Commencement Date, prior to the expiry of any applicable Minimum Period; during the Minimum Term; and/or before any applicable Minimum Holding or Minimum Spend has been achieved.

- 13.2 Unless specified otherwise in a Service Schedule or the Commercial Schedule and without prejudice to any other O2's rights to terminate this Agreement, O2 may terminate this Agreement (in whole or in relation to a particular Service) by providing to the Customer 30 days' notice and, in this event, the Customer shall not be liable for any Termination Fees.

### **Termination resulting from changes to the Agreement**

- 13.3 Subject to clause 13.4 of these General Conditions, the Customer shall be entitled to terminate the Agreement by providing notice in writing if:

- a) O2 increases the prices set out on the O2 Website and/or the Charges in respect of the Services pursuant to clause 11 of these General Conditions other than in accordance with clause 5.6 or 5.7 of these General Conditions or as otherwise permitted under the terms of the Agreement; or
- b) O2 varies the terms of this Agreement, the Services, the Equipment, Network or Software (other than as permitted under the terms of the Agreement including but not limited to the exceptions at clause 13.4 of these General Conditions or ) pursuant to clause 11 of these General Conditions and O2 believes that such variation is not exclusively to the Customer's benefit,

provided that such notice is provided in accordance with the instructions set out in O2's notice of the changes to the Agreement and provided to O2 within 30 days of the date that notice of the change is given to the Customer by O2 in accordance with clause 11 of these General Conditions. Where the Customer terminates the Agreement in accordance with this clause 13.3, the Agreement will terminate on the earlier of: (i) 30 days after the Customer's notice is deemed delivered in accordance with this clause 13.3 and clause 26; or (ii) the date on which the change comes into effect or, where this is not feasible due to the timing of the Customer's notice of termination, as soon as reasonably possible after that date; or (iii) a date agreed in writing by O2 and the Customer.

- 13.4 The right to terminate in clause 13.3 above shall not apply where:

- a) O2 makes any change to the Agreement, Charges, Equipment, Network, Services or Software that O2 believes is exclusively to the Customer's benefit, or where the change is made for any of the following reasons:

- i) the change is purely administrative and has no negative effect on the Customer including but not limited to any change to O2's contact details, registered office or non-contractual processes, for example contacting O2 to speak to an account manager, raise faults or disputes or any other process change which O2 may make from time to time;
- ii) there is a change in applicable law, regulations or the rules of a regulatory body, listing authority or governing body that applies to O2 and/or the Network, Equipment, Services or Software that are provided by O2 under the Agreement; iii) O2 has a legal or regulatory obligation to pass on cost increases and/or changes to the Agreement, Network, Equipment, Services or Software for example where the service charge for calling 084, 087, 09 and 118 numbers increases;
- b) the Agreement, Charges, Equipment, Network, Services or Software change for the following reasons:
  - i) changes are made to the Equipment, Network, Services or Software where the Equipment, Network, Services or Software are variable including but not limited to;
    - (A) changes to the features or functionality of the Equipment, Network, Services or Software;
    - (B) changes to operational or administrative elements of the Services including but not limited to changes to the hours during which the Customer can contact O2 and changes to or removal of individual communication channels through which the Customer can contact O2, changes to any portal, platform or similar tool that O2 uses or makes available for the Customer to use in communicating with O2 and managing the provision of the Services (including changes to any billing platform used by O2 from time to time) and any other changes in relation to the processes through which O2 delivers the Services;
    - (C) any changes to the Network which reflect the overall variability of the Network including but not limited to any routine maintenance updates and upgrades;
    - (D) the replacement of any Equipment, Services or Software which is no longer supported by the manufacturer or which O2 otherwise determines to be end-of-life with equipment, services or software of an overall equivalent specification or standard;
    - (E) changes to the Services, Software or Equipment where there is a minimum technical requirement for equipment, services or software which the Customer must maintain in order to make use of the Services (including but not limited to a requirement to have a 2G or 3G service where this is withdrawn) and the Services, Software or Equipment are changed because the Customer no longer meets the minimum technical requirements specified by O2 from time to time and the Customer either does not implement any changes to the Customer's equipment, services or software required to meet the minimum technical requirement or, where such equipment, services or software are supplied by O2, where the Customer does not agree to accept new or updated equipment, services or software from O2 which would meet the minimum technical requirement;
  - ii) changes to international call rates or services or roaming services or charges that are directly linked to increases in wholesale rates or technological changes notified to O2 by other providers, including but not limited to the withdrawal of 2G or 3G services. Any changes to the Equipment, Services or Charges under this clause 13.4(b)(ii) will be notified to the Customer and will not be made more frequently than once per month;
  - iii) changes to third party charges or costs which are passed on to us by a Third Party which are directly attributable to the Agreement, Charges, Equipment, Network, Services or Software;
  - iv) where O2 has provided general product or service descriptions in relation to the Equipment, Network, Services or Software such descriptions are indicative guidance only and O2 may substitute the Equipment, Network, Services or Software for those of an overall equivalent standard even if the exact features and functionality may differ;
  - v) changes to Charges or other costs which are based on the cost of providing the Services, Equipment, Software or Network to the Customer or carrying out the relevant task in relation to the Services, only to the extent that any change is directly attributable to a change in the cost to O2;

- vi) where O2 believes that the change is necessary for technical or security reasons, vii) where O2 has agreed to provide power or other utilities as part of the Services to install and maintain Equipment, and there is any increase to the price payable to a third party (excluding any Affiliate) for such power or utilities;
- viii) provided that O2 will notify the Customer of any changes under this clause 13.4(b) in accordance with clause 11. If O2 believes that a change under this clause 13.4(b) is likely to materially disadvantage the Customer, O2 will notify the Customer of their right to terminate this Agreement in accordance with clause 13.3 of these General Conditions and the Customer may terminate this Agreement without paying Termination Fees, subject to clause 13.8 of these General Conditions.
- c) the increases in prices or Charges or the variation of the terms of the Agreement, the Services, Equipment, Software or Network have been agreed by the Customer (including in accordance with clause 5.6 or 5.7 of these General Conditions). d)
- e) O2 may inform the Customer of any changes made for the reasons set out in this clause 13.4 in accordance with clause 11 of these General Conditions. If the Customer decides to terminate the Agreement due to a change made for the reasons set out in this clause 13.4, the Customer may still be required to pay a Termination Fee.

13.5 Subject to clause 13.4 of these General Conditions, if the change to the Agreement which is referred to in clause 13.3 of these General Conditions relates:

- a) only to an Add -On Service that the Customer has already signed up to, and the Customer decides to terminate the Agreement due to the change in the Add-On Service, the Customer may still be required to pay a Termination Fee for terminating the Services other than the Add-On Service early (as the Customer already has the right to end the Add-On Service at any time). O2 will confirm any such applicable Termination Fee to the Customer;
- b) only to an Ancillary Service that the Customer has not already signed up to or does not use, the Customer will not have the right to terminate the Agreement without paying a Termination Fee; or
- c) only to an Ancillary Service that the Customer has already signed up to or uses, and O2 believes that the changes are not exclusively to the Customer's benefit, O2 will notify the Customer of this and inform the Customer of the right to terminate the affected Ancillary Service and the Agreement without paying a Termination Fee, subject to clause 13.8 of these General Conditions.

13.6 If the Customer has entered into other agreements with O2, the Customer may in certain circumstances be able to terminate those agreements where the Customer terminates this Agreement in accordance with clause 13.3. For the avoidance of doubt, changes to this Agreement will not give rise to a right to terminate any other agreement which is not linked to this Agreement and O2 will notify the Customer in accordance with the terms of the relevant agreement if the Customer has a right to terminate any other agreement because of a change made by O2 to this Agreement.

13.7 Where O2 enables the Customer to use a service under the Agreement that is supplied by a Third Party and is subject to that Third Party's terms and conditions, including but not limited to End User Licenced Software, O2 is not responsible for any changes made by that Third Party to the Third Party's services, charges or terms and conditions, or for notifying the Customer of those changes as such changes are outside the control of O2 and O2 may not be aware of them.

13.8 Termination of the Agreement in accordance with clause 13.3 of these General Conditions will not affect the Customer's requirement to pay the Charges relating to the Agreement incurred prior to the date of termination, but, in this event, subject to clause 13.4 of these General Conditions the Customer shall not be liable for any Termination Fees in respect of the Services. Where the Customer terminates the Agreement in accordance with clause 13.3, the Customer will be obliged to pay any outstanding or overdue charges and;

- a) where the agreement includes Equipment, the charges in respect of the cost of that Equipment; and

- b) where the Agreement includes any volume-, value-, time- based or other incentives which the Customer has received the benefit of prior to termination, including but not limited to any equipment fund or transformation fund, a payment equivalent to the proportion of the incentive that the Customer has had the benefit of relating to the period between termination of the Agreement and the end of the Minimum Period, or the proportion of the incentive which the Customer has had the benefit of prior to the date it should have vested in accordance with the applicable terms for that incentive, where such incentive has been partly or fully used by the Customer.
- c) O2 shall confirm any such applicable Charges to the Customer following receipt of the Customer's notice to terminate in accordance with clause 13.3.

13.9 For the avoidance of doubt:

- a) where the Agreement, Equipment, Network, Services or Software is not provided in accordance with the agreed standards set out in the Agreement this shall not be regarded as a change to the contractual terms of the Agreement or a change to the Services, Equipment, Network or Software but as a breach of the Agreement by O2 (as the case may be), in which case the contractual remedies set out in the Agreement shall apply and the Customer shall have no right to terminate in accordance with clause 13.3; and
- b) if the Customer requests any change to the Agreement, Charges, Equipment, Network, Services or Software and O2 agrees to such change, the Customer will not have a right to end the Agreement under clause 13.3.

**Termination for cause**

13.10 The Customer may terminate this Agreement by providing to O2 30 days' notice in writing in the event that O2:

- a) has committed a material breach of this Agreement that is incapable of remedy; or
- b) has committed a material breach of this Agreement that is capable of remedy and O2 has failed to remedy that breach within 30 days of the Customer supplying written notice specifying the breach and requiring its remedy.

13.11 O2 may terminate this Agreement (in whole or in relation to a particular Service) by providing 30 days' notice in writing:

- a) in the event that the Customer has committed a material breach of this Agreement that is incapable of remedy;
- b) in the event that the Customer has committed a material breach of this Agreement that is capable of remedy and the Customer has failed to remedy that breach within 30 days of O2 supplying written notice specifying the breach and requiring its remedy; or
- c) if any of the events described in clauses 8.1c), 8.1d), 8.1g) and/or 12.5b) of these General Conditions occurs.

**Insolvency**

13.12 A party to this Agreement may terminate this Agreement by providing 30 days' notice in writing in the event that bankruptcy or insolvency proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation.

**Consequences of termination**

13.13 If this Agreement is terminated and the Customer wishes to transfer to another service provider, O2 will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service in accordance with standard telecommunications industry practice.

13.14 Termination or expiry of this Agreement for whatever reason shall not affect:

- a) the rights and obligations of the parties which have accrued prior to such termination or expiry; or
- b) any provisions of this Agreement which are of a continuing nature and any other provisions of this Agreement necessary for their interpretation or enforcement.

13.15 On termination or expiry of this Agreement (in whole or in relation to a particular Service):

- a) any sums properly due from one party to the other will become immediately due and payable (including Charges for the Service(s) up to the date of termination, Termination Fees relating to the Service(s) and/or Charges for any costs incurred by O2 in relation to Equipment or Services ordered by the Customer but yet to be supplied by O2);
- b) the Customer shall cease using the Service(s); and
- c) each party will, on request, promptly return to the other all Confidential Information and other property belonging to the other relating to the Service(s) which is in its custody or control or will destroy such Confidential Information and certify such destruction to the other party.

## **14 EQUIPMENT**

14.1 The Customer shall comply with any instructions provided by O2 or an O2 Representative from time to time in respect of the Equipment.

14.2 Certain elements of Services are dependent on the Customer using the Equipment. If the Customer does not use the correct Equipment, then:

- a) the Services may not function correctly;
- b) O2 may choose not to provide the Customer with the relevant Services; and
- c) O2 shall have no liability for the Customer's inability to receive those Services and the Customer remains liable for the relevant Charges.

## **15 INTELLECTUAL PROPERTY**

15.1 All intellectual property rights in the Software, Equipment associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software, Equipment or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Software, Equipment or associated documents and all parts thereof, directly against the Customer.

15.2 Unless otherwise specified in this Agreement, all intellectual property developed in the provision of any Service will vest in O2 or its licensors. O2 may use know-how acquired, principles learned or developed or experience gained during the performance of any Service, to perform work for other customers.

15.3 All information or materials exchanged between O2 and the Customer in connection with the Agreement, together with the copyright therein, will remain the property of O2, O2's suppliers or the Customer as applicable and will be returned to the owning party on termination of the Agreement, if requested by such party.

15.4 O2 grants to the Customer a non-exclusive, non-transferable licence to use, in object code form, any Software and the Equipment provided by O2 or its suppliers solely in the United Kingdom in connection with the proper use of the Services. The Customer undertakes not to copy, alter, adapt, translate, software develop, decompile, license, sub-license, reverse engineer or resell any Software (or any part of the Software), unless expressly permitted to do so by O2 or by relevant law. This licence will terminate on the termination of this Agreement (or any relevant part of this Agreement).

15.5 O2 grants to the Customer a non-exclusive, non-transferable royalty free licence for the term of this Agreement (in whole or in relation to a particular Service(s)) to use any information or materials provided by O2 to the Customer under this Agreement to the extent necessary for the Customer to receive the benefit of the Service(s). The Customer must not copy, reproduce, distribute, alter, adapt, translate,

develop, decompile, license, sub-license, reverse engineer or resell any such information or materials (or any part thereof), unless expressly permitted to do so by O2 or relevant law.

15.6 In the event that the Customer is subject to a claim by a Third Party in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the Equipment, Software, information or materials provided by O2 then O2 will indemnify the Customer in relation to sums awarded or paid in settlement for such claim provided that the Customer promptly notifies O2 of such claim, makes no admission in respect of such claim, the Customer seeks to mitigate the loss where it can do so without unreasonable inconvenience or cost, allows O2 or its licensor to conduct all negotiations and proceedings (providing O2 or its licensor with all reasonable assistance) and allows O2 at O2's own discretion and expense to modify or replace the Equipment, Software, information or materials so as to avoid any continuing infringement. This indemnity does not apply to any such infringements caused by the Customer's own breach of the terms of this Agreement or the operation or use of the Equipment, Software, information or materials in conjunction with other equipment and software or Services not supplied by O2 pursuant to this Agreement in which event the Customer shall indemnify O2 in respect of any claims, proceedings and expenses arising from any such infringement by the Customer.

15.7 The Customer will not be entitled to and agrees not to:

- a) use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of O2 (or any of its suppliers) or any part thereof so that any person might reasonably import a connection between those goods or services and O2 (or any of its suppliers) or any part thereof;
- b) register or attempt to register as a trade mark anything referred to in clause 15.7a) of these General Conditions; and/or
- c) authorise any Third Party to do anything referred to in clause 15.7a) of these General Conditions.

The Customer further agrees not to infringe any copyright, or registered or unregistered trademark rights belonging to any Third Party in respect of any Equipment.

### **End User Licensed Software**

15.8 The Customer recognises that the Services may be dependent upon End-User Licensed Software (e.g. click-through licences) and if the Customer does not accept the licence terms relating to any End-User Licensed Software, O2 shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of End-User Licensed Software.

15.9 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End- User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.

15.10 The Customer shall accept and comply with all licence terms required from time to time by any Third Party provider of any Software or materials as agreed between the relevant Third Party and O2.

## **16 CONFIDENTIALITY**

16.1 Either party receiving Confidential Information (the "Recipient") from the other (the "Disclosing Party") shall not, without the Disclosing Party's prior written consent, use that Confidential Information for any purpose other than for the purposes of fulfilling a party's obligations under this Agreement, or disclose such Confidential Information to any person other than O2 Employees and Customer Employees as required, officers and authorised subcontractors and suppliers who have a need to know that information ("Authorised Personnel") who have a need to know that information.

16.2 Clause 16.1 shall not prohibit use or disclosure of Confidential Information by either party to the extent:



- a) the Confidential Information is published by or on behalf of the Disclosing Party or becomes generally known to the public otherwise than as a result of a breach of this Agreement or any other obligation of confidentiality;
- b) such Confidential Information was lawfully known to the Recipient prior to the time of disclosure by the Disclosing Party and is not subject to any obligations of confidentiality;
- c) the Confidential Information was lawfully disclosed to the Recipient by a third party that was not itself under any obligations of confidentiality;
- d) the Confidential Information is replicated or developed independently by or on behalf of the Recipient without access to or knowledge of the Confidential Information;
- e) the disclosure is made to the professional advisers of a party provided that such professional advisers are made expressly aware of the confidential nature of the Confidential Information;
- f) the disclosure of Confidential Information is required for the purposes of any judicial proceedings arising out of a breach of this Agreement or any other agreement entered into under or pursuant to this Agreement; or
- g) the Confidential Information is required to be disclosed by any applicable law or regulation, by any governmental or regulatory body, or by or in connection with the rules of any stock exchange on which the shares of either party or its holding company are listed (including where disclosure is required as part of any actual or potential offering, placing and/or sale of securities of either party or its holding company),
- h) provided however that prior to the disclosure or use of any Confidential Information in the circumstances described in clauses 16.2 (f) or (g), the party concerned shall, where not prevented by applicable law or regulations, consult with the other party about the nature and extent of the required use or disclosure insofar as is reasonably practicable.

16.3 Upon termination of the Agreement, for whatever cause, the Recipient will:

- a) cease to use the Confidential Information given to them by the Disclosing Party for any purpose;
- b) return to the Disclosing Party or destroy all documents and all other materials containing or reflecting any Confidential Information, together with any copies, which are in the Recipient's possession or control or in the possession or control of any of the Recipient's Authorised Personnel and which are in a form capable of delivery and destruction; and
- c) expunge all Confidential Information from any computer, word processor or similar device into which it was programmed by the Recipient or any of the Recipient's Authorised Personnel,
- d) provided, however, that the Recipient will be permitted to retain any computer records and files containing any Confidential Information which have been created pursuant to its automatic archiving and back-up procedures ("Information Archives").

16.4 The Recipient acknowledges that neither the return nor the destruction of any Confidential Information in accordance with clause 16.3(b) nor the expunging of any Confidential Information in accordance with clause 16.3(c) will release the Recipient from its obligations under this Agreement. Any Confidential Information retained on a Recipient's Information Archives shall be kept strictly confidential and shall not be used for any purpose, other than as required by applicable laws and regulations.

## **17 LIMITATION OF LIABILITY**

17.1 This clause 17.1 of these General Conditions sets out each party's entire liability (including any liability for the acts and omissions of each party's employees, agents or sub-contractors) to the other party in tort, contract or otherwise, arising out of or in connection with the performance or contemplated performance or non-performance of this Agreement.

17.2 Subject to clauses 17.4 and 17.5 of these General Conditions, neither party shall be liable to the other in respect of any matter arising out of or in connection with this Agreement in contract or tort (including negligence) or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated

savings, goodwill, business interruption, from wasted expenditure or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.

17.3 Subject to clauses 17.2, 17.4 and 17.5 of these General Conditions, O2's aggregate liability of any sort resulting from breach of contract or negligence, under any indemnity or otherwise arising in connection with this Agreement (whether to the Customer, any Customer Affiliate, Users or otherwise) shall be limited in respect of all claims arising in a Year ("Relevant Year") to the greater of:

- a) the sum of £50,000; or
- b) an amount equal to the Annual Agreement Value,

where the "Annual Agreement Value" means the total Charges paid or payable by the Customer in the Year prior to the Relevant Year (or where a claim arises during the first Year of this Agreement, the Charges paid or payable up to the date on which the Customer's right to take action in respect of the claim arose and subject always to O2's aggregate liability for claims in the first Year being no greater than the total Charges paid or payable by the Customer in the first Year); and "Year" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date.

17.4 Nothing in this Agreement shall exclude or restrict the liability of either party for:

- a) death or personal injury resulting from that party's negligence;
- b) claims in respect of the Customer's liability under clause 10 of these General Conditions;
- c) any and all damage to any equipment belonging to O2 or the Network caused by the Customer's breach of this Agreement;
- d) breach of any implied term as to title or quiet enjoyment arising out of section 12 of the Sale of Goods Act 1979; or
- e) fraud or fraudulent misrepresentation.

17.5 Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

17.6 Nothing in this clause 17.1 shall apply to the payment of the Charges.

17.7 Subject to clauses 17.4 and 17.5 of these General Conditions, the express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

17.8 The limited warranty, exclusive remedies and limited liability set forth above are fundamental elements of the basis of the Agreement between O2 and the Customer. O2 would not be able to provide the Services and/or Equipment on an economic basis without such limitations.

#### **Liability for third parties**

17.9 O2 shall not be liable for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by O2 as subcontractors or assignees in respect of the performance of O2's obligations under this Agreement.

### **18 ASSIGNMENT**

18.1 The Customer shall not assign or transfer this Agreement to any Third Party, provided that the Customer may assign or transfer this agreement to a Customer Affiliate with the prior written consent of O2 (such consent not to be unreasonably withheld or delayed).

18.2 O2 may assign or transfer this Agreement to any Affiliate and may subcontract the performance of all or part of the same, provided that O2 shall remain liable for the acts and omissions of its subcontractors.

## **19 ENTIRE AGREEMENT**

19.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement.

19.2 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause 19.2 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

## **20 INVALIDITY**

If any of the provisions of this Agreement become invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In such circumstances, the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

## **21 WAIVER**

The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

## **22 DATA PROTECTION**

22.1 The parties operate in accordance with Data Protection Laws. The Customer and O2, who shall be Data Controllers, agree to fully comply with the provisions of or standards required by Data Protection Laws. O2 shall also act as a Data Processor for the Customer when acting upon the Customer's instructions to connect Users to the Service.

22.2 The Customer agrees that its details or those of its Users may be used and disclosed by O2 for the purposes of this Agreement and for marketing purposes including informing the Customer and its Users from time to time about other Services or associated technologies. The Customer will ensure that any disclosure of Users' Personal Data by the Customer to O2 is compliant with Data Protection Laws and that Users have been notified of O2's Privacy Policy at [o2.co.uk/termsandconditions/privacy-policy](https://o2.co.uk/termsandconditions/privacy-policy). If a User does not want its details to be used for direct marketing purposes, the Customer should contact its designated O2 account manager or the O2 Data Controller at Telefónica UK Limited, 500 Brook Drive, Reading, RG2 6UU.

22.3 To the extent that O2 is required as part of the Services to process Personal Data as a Data Processor only, O2 shall:

- a) process the Personal Data only on behalf of the Customer (or, if so directed by the Customer, Customer Affiliates), for the purposes of performing this Agreement and in accordance with instructions contained in this Agreement or the lawful instructions received from the Customer from time to time. O2 shall notify the Customer in the event that it becomes aware of applicable laws or regulation which prevents O2 from complying with the Customer's lawful instructions;
- b) at all times comply with the data security related requirements of Data Protection Laws and shall (i) implement appropriate technical and organisational measures to protect the Personal Data against

unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, and (ii) take reasonable steps to ensure the reliability of personnel, suppliers and subcontractors who may process Personal Data and ensure that all such personnel are bound by a duty of confidence to maintain the confidentiality of the Personal Data;

- c) with effect from 25 May 2018, at the Customer's expense, provide reasonable assistance with the Customer's compliance with any exercise by Data Subjects of their rights under Data Protection Laws;
- d) with effect from 25 May 2018 put in place a process whereby the Customer will be provided with access to a list of sub-processors processing Personal Data in relation to the Customer. In the event that the Customer objects to the use of a sub-processor the Customer shall be entitled to terminate the Agreement in accordance with clause 13.1. In relation to such sub-processors O2 shall ensure that any such processing is carried out in accordance with the requirements of Data Protection Laws including ensuring that a contract is in place providing (1) sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of Data Protection Laws; (2) prohibiting the sub processor from sharing any Personal Data with any third party without the prior authorisation of O2 or from using the Personal Data for any purpose other than as authorised by O2; and (3) obligations which are no less onerous than those placed on O2 under the terms of this clause 22.3;
- e) with effect from 25 May 2018 and in the event that O2 becomes aware of a Personal Data Breach, notify the Customer of the Personal Data Breach without undue delay;
- f) with effect from 25 May 2018 provide the Customer with reasonable assistance with the Customer's obligations under Data Protection Laws to notify data protection authorities and/or affected Data Subjects in the event of a Personal Data Breach;
- g) with effect from 25 May 2018, at the Customer's request and expense, provide the Customer with such information as the Customer may reasonably request to enable the Customer to demonstrate compliance with its obligations under Data Protection Laws, to the extent that O2 is able to provide such information. Such information will include reasonable evidence of the results of any applicable third party audit commissioned by O2 to verify its information security controls. The Customer shall comply with any reasonable security instructions, confidentiality requirements and policies notified to it by O2 in connection with the review referred to in this clause 22.3(g); and
- h) on termination or expiry of this Agreement cease processing the Personal Data and delete such Personal Data from its systems (subject to any legal obligation that requires such Personal Data to be retained).

22.4 Subject to clause 22.3(d) O2 may transfer Personal Data in connection with the provision of the Services, including to any subcontractor, and such transfer may be outside the European Economic Area. In such circumstances O2 will comply with its obligations under Data Protection Laws by:

- a) taking reasonable steps to ensure the reliability of such subcontractors and prior to any such transfer will enter into a written agreement with such subcontractor containing contractual provisions which ensure an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of the Personal Data; and
- b) complying with the requirement in Data Protection Laws to ensure an adequate level of protection to any Personal Data that is transferred.

22.5 The Customer acknowledges that when acting as a Data Processor, O2 is reliant on the Customer for direction as to the extent O2 is entitled to use and process the Personal Data in connection with the Services. Consequently, O2 shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to O2's actions to the extent that such actions result from instructions received from the Customer or any breach of this clause 22 by the Customer.

## **23 MATTERS BEYOND THE PARTIES' REASONABLE CONTROL**

23.1 Neither party shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of this Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or

other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, lightning, extremely severe weather, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).

23.2 The Customer agrees that O2 shall have no liability for improper, incorrect or unauthorised use of the Services or Equipment by the Customer or any Third Party.

## **24 EXPORT CONTROL**

24.1 In the event that the Customer proposes to export any Hardware or other equipment supplied by O2 pursuant to this Agreement, the Customer agrees to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.

24.2 In the event that the Customer procures Equipment, the Customer agrees that in entering into this Agreement the Customer accepts the terms of the following end-user undertaking: The Customer certifies that it is or will be the end-user of the Equipment and further certifies that it shall use the Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice services in order to perform their everyday contractual duties; that the Equipment will not be used for any purpose connected with explosives, chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes; and that the Equipment, or any replica of it, will not be used in any nuclear explosive activity or un-safeguarded nuclear fuel cycle activity.

## **25 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties and nothing in this Agreement shall be construed to appoint one party as the distributor, dealer or agent of the other.

## **26 NOTICES**

Any notice or other communication required or permitted under this Agreement to be given in writing shall be given in writing to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made: when delivered personally; or, if properly addressed and posted by first class mail in the United Kingdom within two Working Days of posting; or, if sent by facsimile upon being sent; or, if sent by e-mail or other electronic means at the time of transmission provided the sender can provide proof the notice was properly addressed.

## **27 NO THIRD PARTY RIGHTS**

Except as otherwise explicitly set out in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. For the avoidance of doubt, Customer Affiliates shall have no rights to enforce any term of this Agreement.

## **28 PRIORITY OF DOCUMENTS FORMING THIS AGREEMENT**

28.1 This Agreement is recorded in the following documents:

- a) these General Conditions;
- b) the Commercial Schedule;
- c) the applicable Terms;
- d) the applicable Service Schedule(s) or quotation;
- e) any other document incorporated by reference in Terms or Service Schedules; and f) the O2 Website.

28.2 In the event of any conflict between provisions of the documents making up this Agreement, the order of precedence shall be as set out in clause 28.1 of these General Conditions (in order of decreasing precedence) unless explicitly stated otherwise.

## **29 TUPE**

29.1 The Customer warrants that it has taken all reasonable steps to verify and, following such investigation, has no grounds to believe that any Customer Employee's employment shall transfer from the Customer or any Third Party to a Services Provider pursuant to the TUPE Regulations at the commencement of this Agreement, however and whenever such transfer takes effect.

29.2 If, notwithstanding the warranties given by the Customer and/or the intention of the parties stated in clause 29.1 and 29.2 of these General Conditions, either at the commencement of this Agreement or during the term of this Agreement, any Customer Employee claims or it is determined that his contract of employment has been transferred from the Customer or any Third Party to a Services Provider pursuant to the TUPE Regulations or otherwise or any Customer Employee claims or it is determined that any liability regarding his employment has so transferred then:

- a) the Services Provider may terminate any such contract forthwith; and
- b) the Customer shall indemnify and hold harmless the Services Provider against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) arising out of such termination and against sums payable to or on behalf of such employee in respect of his employment whether arising before or after the transfer of his employment (or alleged transfer of employment) to the Services Provider (including for the avoidance of doubt any liability arising from a failure to comply with any information or consultation requirements under the TUPE Regulations).

29.3 O2 warrants that no Services Provider shall bring any claim under the TUPE Regulations arising out of or in connection with any actual or alleged failure of the Customer or any Third Party to provide Employee Liability Information in accordance with the TUPE Regulations.

29.4 O2 will indemnify and keep indemnified the Customer against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) which the Customer or its incumbent supplier may suffer or incur arising out of any breach of clause 29.3 of these General Conditions.

29.5 The parties intend that no O2 Employee's employment shall transfer from a Services Provider to the Successor Supplier pursuant to the TUPE Regulations as a result of the commencement of the provision of the Replacement Services by a Successor Supplier, however and whenever such commencement takes effect.

29.6 If, notwithstanding the intention of the parties stated in clause 29.5 of these General Conditions, as a result of the commencement of the provision of the Replacement Services by the Successor Supplier, any O2 Employee claims or it is determined that his contract of employment has been transferred from a Services Provider to the Successor Supplier pursuant to the TUPE Regulations or otherwise or any O2 Employee claims or it is determined that any liability regarding his employment has so transferred then:

- a) the Successor Supplier may terminate any such contract forthwith; and
- b) O2 shall indemnify and hold harmless the Customer against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) incurred or suffered by the Successor Supplier arising out of such termination and against sums payable to or on behalf of such employee in respect of his employment whether arising before or after the transfer of his employment (or alleged transfer of employment) to the Successor Supplier (including for the avoidance of doubt any liability arising from a failure to comply with any information or consultation requirements under the TUPE Regulations).

- 29.7 The Customer warrants that no Successor Supplier shall bring any claim under the TUPE Regulations arising out of or in connection with any actual or alleged failure of the Services Provider to provide Employee Liability Information in accordance with the TUPE Regulations.
- 29.8 The Customer will indemnify and keep indemnified O2 against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) which the Services Provider may suffer or incur arising out of any breach of clause 29.7 of these General Conditions.
- 29.9 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause 29 to the extent necessary to ensure that:
- a) any Services Provider shall have the right to enforce the obligations owed to, and indemnities given to, O2 by the Customer under this clause 29; and
  - b) any Successor Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Customer by O2 under this clause 29,
- in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

### **30 CREDIT CHECKS AND FRAUD PREVENTION**

- 30.1 O2's acceptance of Customer's application for Services, may be subject to O2 checking the following records about the Customer and the Customer's business partners:
- a) O2's own records;
  - b) business records at credit reference agencies ("CRAs") including both public (including the electoral register) and fraud prevention information. When CRAs receive a search from O2 they will place a search footprint on the Customer's business credit file that may be seen by other lenders;
  - c) records held by fraud prevention agencies ("FPAs"); and
  - d) if the Customer contact is a director, O2 may seek confirmation, from CRAs that the residential address that is provided is the same as that shown on the restricted register of directors' usual addresses at Companies House.
- 30.2 O2 may also make checks such as assessing the Customer's application for Services and verifying identities to prevent and detect crime and money laundering. O2 may also make periodic searches at CRAs and FPAs to manage the Customer's O2 account.
- 30.3 O2 will send information on the Customer's applications, O2 account and how the Customer manages its account to CRAs which may record such information, including information on the Customer's business and its proprietors. The CRAs may create a record of the name and address of the Customer and its proprietors if there is not one already.
- 30.4 If the Customer does not pay the Charges when they become due and payable, CRAs will record the outstanding debt which shall remain on file for six years after they are closed (whether by settlement or default). Such records may be supplied to other organisations by CRAs and FPAs to perform similar checks and to trace the Customer's whereabouts and recover debts owed by the Customer.
- 30.5 If the Customer gives O2 false or inaccurate information or O2 suspect or identify fraud or criminal activity O2 will record this and may also pass this information to FPAs and other organisations involved in crime and fraud prevention.
- 30.6 O2 and other organisations may access and use from other countries the information recorded by fraud prevention agencies.
- 30.7 Customer data may also be used for other purposes for which the Customer or any User gives its specific permission or, in very limited circumstances, when required by law or where permitted under the Data

Protection Laws. To read the full details of how data may be used please visit the O2 Website at [www.o2.co.uk](http://www.o2.co.uk).

- 30.8 The Customer can contact the CRAs currently operating in the UK, including CallCredit (Consumer Services Team, PO Box 491, Leeds, LS3 1WZ or call 0870 0601414); Equifax PLC, (Credit File Advice Centre, PO Box 3001, Bradford, BD1 5US; 0870 010 0583; [www.myequifax.co.uk](http://www.myequifax.co.uk)); and Experian (Consumer Help Service, PO Box 8000, Nottingham NG80 7WF; 0844 4818000; [www.experian.co.uk](http://www.experian.co.uk)). The information they hold may not be the same. They will charge a small statutory fee for access to their Records. Details of the relevant fraud prevention agencies are available from O2 on request.

### **31 GOVERNING LAW**

This Agreement, and any issues or disputes of whatever nature arising out of or in any way relating to it or its formation (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales.